OFFICE OF THE
OMBUDSMAN

Legislative Assembly
Province of British Columbia

1985 Annual Report of the Ombudsman

To the Legislative Assembly of British Columbia

British Columbia Cataloguing in Publication Data

British Columbia. Office of the Ombudsman.
Annual report of the Ombudsman to the Legislative Assembly of British Columbia. — 1981-

Continues: Annual report of the Ombudsman to the Legislature of British Columbia ISSN 0226-8930
ISSN 0713-2921 = Annual report of the Ombudsman to the Legislative Assembly of British Columbia

1. British Columbia. Office of the Ombudsman - Periodicials. 2. Ombudsman - British Columbia - Periodicals.
I. Title.

JL429.5.04B74 354.711009'1

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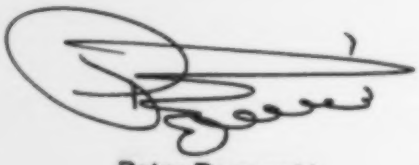
May, 1986

The Honourable Walter Davidson
Speaker of the House
Parliament Bulidings
Victoria

Dear Mr. Speaker:

I have the honour to transmit herewith the 1985 Report to the Legislative Assembly, in accordance with provisions of Section 30 (1) of the Ombudsman Act, R.S.B.C. 1979, Chapter 306. This Annual Report covers the period January to December 1985.



Peter Bazowski
Acting Ombudsman

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PART I — General Comments

This year has been a year of transition for the Ombudsman's office. Dr. Karl Friedmann's six-year term as British Columbia's first Ombudsman expired on June 30, 1985. I was appointed Acting Ombudsman by the Lieutenant Governor in Council on July 2, 1985, and assumed office on that day. This report covers the period during Dr. Friedmann's six months in office (January 1, 1985 to June 30, 1985) and my six months in office (July 2, 1985 to December 31, 1985).

Complaints which were closed prior to my term are reported without modification. I would not reconsider any of these complaints unless new information not previously available came to light.

Administrative Review

Upon my appointment I found an office with a competent staff who were genuinely concerned about the needs of the complainants. They have an excellent understanding of the role and function of the Office of the Ombudsman. However, I believed that a number of changes were required, primarily of an administrative nature, that would facilitate the work of the office.

1. Equal Pay for Equal Work

In addition to the full time staff (F.T.E.'s) there were a number of persons contracted by the office to investigate complaints. These persons were, in some cases, being paid about half of what the full time staff were receiving, although they were doing the same work. This situation had created a morale problem in the office and understandably so. I believe this office, in promoting fairness in the government, must itself be fair. The contracts were amended affording fewer contractors similar remuneration to their colleagues on staff.

2. Office Organization

Efficiency in any organization requires that reporting relationships be clearly defined. Staff must be made aware of their mandates and responsibilities. They must have access to senior managers and be able to seek instructions and guidance when necessary. There were a number of Senior Ombudsman Officer positions vacant in July. These positions were filled and an additional one created to supervise investigators of institutional complaints. Flowcharts representing the current office organization and the names of the incumbents are located in Part III of this report.

In order to standardize procedures between the Victoria and Vancouver offices two Directors of Investigations positions were consolidated into one. The effect of this has been to ensure consistency in the operation of both offices and reduction of one senior position.

3. The Backlog

Faced with a burgeoning backlog of cases and fewer staff to cope with it, it was necessary to devise methods to reduce the number of outstanding cases so that we could respond to new complaints in a timely manner. This was accomplished by a number of measures.

1) For the less serious cases or cases where the

complainant had alternative remedies, the task of responding to the complainants was delegated to Ombudsman officers. This limited the need for correspondence to be passed through additional levels within the office by giving the Ombudsman officers more authority and responsibility. It also meant that a dissatisfied complainant could express dissatisfaction to a more senior officer, including the Ombudsman, for a fresh or more critical look at the complaint and conclusions.

2) Regardless of any efficiencies we could achieve in streamlining the office, we still required extra full time employees to assist in the work. With the Ministries' cooperation, we were able to secure two staff from two Ministries as secondments to our office for six-month terms. It was agreed that these Ministry staff would not investigate complaints concerning their respective ministries but would assist in a consulting capacity while carrying a normal caseload involving other Ministries. The benefits to our office are readily apparent. The seconded persons, when they return to their Ministries, will have an increased knowledge base and be able to better explain to their colleagues the role and function of the Ombudsman.

In January of 1985 there were 1,520 outstanding cases, with the number increasing to 1,571 in June. By December 31, 1985 the backlog was reduced to 1,109 cases.

4. Nomenclature

"What's in a name?", the poet quipped. A lot, we would suggest. One word can convey an impression. Formerly Ombudsman staff were referred to as "investigators". That word did not adequately express the function of the staff. While the staff does investigate cases, that is only part of their function. Equally important is their role in facilitating resolutions of complaints. Under the **Ombudsman Act**, power is given to consult with an authority to attempt to settle a complaint at any time during or after an investigation. Titles of staff have been changed to better reflect their actual functions. The Director of Investigations, Senior Investigator, Investigator and Complaints Analysist are now the Director of Operations, Senior Ombudsman Officer, Ombudsman Officer and Ombudsman Intake Officer, respectively.

5. Statistical Reporting

The purpose of statistical detail in a report is to give meaningful and accurate information to the reader. In the past all incoming complaints and inquiries have been called complaints regardless of our authority to investigate them. A large percentage of these complaints involved bodies that were completely outside our authority or involved authorities in the unproclaimed sections of the Schedule of Authorities to the Ombudsman Act. As of January 1, 1986 our statistical reporting system will distinguish:

a) complaints and inquiries relating to authorities that can currently be investigated by this office.

b) complaints and inquiries relating to authorities in the unproclaimed sections of the Schedule.

c) inquiries concerning bodies which do not appear in the proclaimed or unproclaimed sections of the Schedule. For the purpose of clarification the terms complaint and inquiry are defined as follows:

Complaint: An expression of dissatisfaction by a member of the public about an authority that is listed in the proclaimed section of the Schedule to the Ombudsman Act.

Inquiry: Any request for information or assistance that does not amount to a complaint.

With respect to the non-proclaimed Sections of the Schedule to the Ombudsman Act, we will distinguish for reporting purposes between complaints and inquiries although, practically speaking, they will be dealt with as inquiries only.

During 1985 there were 13 reports made to Lieutenant Governor In Council, and 7 reports were made to the Legislature pursuant to Sec. 24 of the Ombudsman Act. In addition, one Special Report was made pursuant to Sec. 30(2) of the Act. For comparison purposes, this Annual Report contains, in the Statistical Section, similar information covering the period 1979 to 1985.

6. Role/Tone/Style

During the course of investigation, the Ombudsman may attempt to settle a matter that is the subject of a complaint. The first step in investigating a matter is to understand the issues and gain as much information as possible concerning the complaint. To glean this understanding, face to face meetings are the best vehicle. We have over the past few months encouraged our staff to meet personally with the complainant and government personnel jointly or separately in order to reach a resolution of a complaint or at least to receive an accurate reading of the issues involved in the

complaint. Face to face meetings encourage frank and honest discussions and foster a feeling of mutual trust and understanding which are the keystone to success in negotiating resolutions to complaints. As a result, we have achieved faster and more satisfactory resolutions to more cases.

During my period of office, I have not had any complaints about the staff from the authorities but have received numerous complimentary comments about the way resolutions have been accomplished. I am equally pleased to report that I have had only a handful of complaints from complainants about the way their complaints have been handled or the final resolutions. The number of complaints received during the year were slightly less than the previous year, a decrease of 1.3 per cent with the number of resolutions increasing by 5.97 per cent.

Staff have been encouraged to do more investigations on site where physical evidence or relevant local information were involved, resulting in a number of more complex longstanding complaints being resolved.

The staff have also been encouraged to prepare correspondence in less legalistic and more readily understandable language. To assist in this task, we arranged a training workshop in writing skills by an expert in this field.

The foregoing measures have resulted in significant improvement in the staff morale which was at a low level when I arrived and could not help but be reflected in the day-to-day service provided to the public.

7. Accessibility

The Ombudsman's office provides services to all residents in the Province of British Columbia. We have an office in Victoria and Vancouver providing direct services to the population in those areas. However, in order to ensure easier access to those outside of these two major metropolitan areas we have over the past few months:

a) established two new toll free lines. For complaints/inquiries concerning Crown agencies such as Workers' Compensation Board, the Insurance Corporation of B.C. and B.C. Hydro, the number to call is 1-800-972-8972 (Vancouver office). For all other complaints/inquiries including Ministries of the government, the number to call is 1-800-742-6157 (Victoria office).

b) entered into an agreement with the Government Agents Branch of the Ministry of Finance, whereby a person who wishes to make a complaint to our office may attend any one of the 61 government agents offices in British Columbia and receive a complaint form and a pre-addressed envelope so that his/her written complaint can be quickly dispatched to our office. A member of the public can ask for assistance in filling out a complaint form. In doing so, information disclosed to the government agent will be treated in strictest confidence.

c) leased a Rapicom service which gives the office the capacity to have documents transmitted within minutes to and from any of the 61 Government Agents offices, or any other office with similar equipment.

d) visited a number of regions in the province to meet complainants personally and to speak to community groups and to give interviews to radio, press and television about the role of the Ombudsman's Office.

Despite brochures and advertising by this office there is still a significant portion of the population who are not aware of the services provided by this Office.

During the last six months the following communities were visited:
Rossland, Trail, Castlegar, Cranbrook, Fernie, Chetwynd, Fort St. John, Dawson Creek, Kelowna, Nanaimo, Duncan, Courtenay, Campbell River and Port Alberni.

Institutional visits continue to be a top priority on the office agenda. We have expanded the number of institutions we visit on a regular basis, established a branch in the Vancouver office which deals exclusively with institutional matters and increased the number of staff concentrating on this area.

While we were at first perceived by some institution staff and administrators to be "fishing for complaints", now that our presence has been established, relationships have improved, particularly where institutional staff have come to recognize that they may call on us as an ally to help them achieve their positive goals on behalf of residents.

Some institutions are subject to review by a number of outside agencies, but we do not want to be perceived as simply another body to look over their shoulder or second-guess the work being conducted within the institution's premises. It is our desire that the institution deal with and resolve its own problems; and if we can play a helping or facilitating role in that process, we are pleased to do so.

At times, residents — for a variety of reasons

— may simply feel more comfortable talking to someone from an outside organization that embodies the principles upon which an Ombudsman's office operates. It is the right of residents under law to do so, and since people in institutions less readily have access to us, we feel an obligation to be as available as possible to them. But all of our interaction with institutions is governed by the recognition that there are unique pressures in such centres, and if this office can be one more release valve for some of those pressures, we can assist the institution and residents to function in a manner which recognizes both interests.

8. Confidentiality

The Ombudsman Act requires that the Ombudsman and his staff not divulge **any** information received by them except in very limited circumstances. This provision protects information coming from complainants and authorities. Further, the Act requires the Ombudsman and his staff maintain confidentiality in respect of all matters coming to their knowledge in the course of performing their duties.

No doubt, the main reason for the proviso is so that persons can approach this office without fear that information given will be passed to other parties which may result in negative repercussions. However, another reason is that some of the information received by the office is highly confidential and protected by statutory provision in other legislation (e.g. criminal records regarding young offenders, particulars of child abuse complaints, medical records, etc.).

Over the past few months, we have reviewed the security arrangements in this office and found them to be lacking. As a result we have renovated our Victoria office to provide secure facilities for the retention of closed files. In addition, we have instructed the staff on the handling of files and have provided locking filing cabinets so that we can guarantee, to the greatest extent possible, the confidentiality of information coming to this office.

The question of confidentiality has received some publicity over the past several months but as the matter is still before the courts I believe it would be inappropriate for me to make any further comment at this time.

9. Reporting

In order to keep the ministries and Crown agencies advised of the complaints received by the office concerning their organization, we have provided them with monthly statistics of the number of cases closed during the previous month and the category of closing. We have expanded this reporting procedure to include the Ministers so that they may be appraised of difficulties the public is experiencing with their Ministry or any Crown agency for which they may have responsibility. In addition to the actual number of cases closed, a brief summary of each case is provided, as well as the number of outstanding cases at the end of each month.

10. Police Complaints

As a result of the decision on Friedmann vs. Vancouver Police Board et al we have had to consider the role of the office in handling police complaints. The Supreme Court of British Columbia has said that a municipal police board is an authority under the Act and to a limited extent the Ombudsman's Office can investigate complaints against the disciplinary authorities established to investigate complaints against the police. This falls far short of being able to investigate complaints concerning the police in general. The mandate of the Ombudsman does not permit the office to have access to police records or investigate the actual investigative activities of the police.

While I believe that there should be civilian oversight of complaints concerning the police, because of the Supreme Court decision and the lack of clarity in the **Ombudsman Act**, I do not think the Ombudsman is the vehicle to investigate these complaints. There is another reason why the Ombudsman may not be the best vehicle for undertaking this role. The majority of policing in the province is not carried out by the 13 municipal police forces but rather by the Royal Canadian Mounted Police on contract to the province and the municipalities.

Of 5,412 policemen in British Columbia, 3,697 are members of the RCMP. As a result of Supreme Court of Canada decision in Putnam et al, the provisions regarding police complaints in the **Police Act** of British Columbia do not apply to the RCMP. Likewise, the Ombudsman is precluded from investigating complaints concerning the RCMP because the Provincial Legislature is not empowered to pass laws governing the conduct of the RCMP. Even if legislation were amended giving powers to the Ombudsman to investigate police complaints, those powers could not extend to complaints concerning a federal body such as the RCMP.

We have discussed our concerns with the Attorney General's Ministry and representatives of the

British Columbia Police Commission. We agreed there is a need for civilian oversight of police activity, the ability for the overseer to be able to investigate and have access to police files and the need for consistency and uniformity in a complaint procedure so that a citizen can have his police complaint dealt with in a similar manner regardless of whether the police force complained of is federal, provincial or municipal.

The British Columbia Police Commission is currently reviewing the proposed RCMP complaint procedures and the Police Act procedures to ascertain whether uniform complaint procedures are possible. Our office will continue to cooperate with the commission in this worthwhile endeavour.

As police were not included in the Schedule of Authorities to the **Ombudsman Act** and there is a Police Commission provided for in this province, I am inclined to believe that it was not the intent of the Legislators that the Ombudsman's Office have this responsibility, and suggest the matter should be clarified through appropriate legislation.

11. Non-Jurisdictional Complaints

People frequently turn to the Ombudsman for assistance with complaints which are not within the jurisdiction of the office.

In general there are five types of complaints which are not within jurisdiction:

a) complaints against authorities listed in the Schedule to the **Ombudsman Act**, but not yet proclaimed in force.

b) complaints against individuals, companies, unions, the federal government, associations and other organizations over which the Ombudsman does not have jurisdiction now and which are not presently in the Schedule to the **Ombudsman Act**.

c) pursuant to Section 11(1)(a) of the **Ombudsman Act**, the Ombudsman has no jurisdiction because the complainant has a statutory right of appeal to a court or tribunal constituted by or under an enactment. This lack of jurisdiction remains in effect until the right to appeal has been exercised or until the time prescribed for the exercise of that right has expired.

d) pursuant to Section 11(1)(b) of the **Ombudsman Act**, the Ombudsman has no authority to investigate the actions of a person who is acting as solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

e) authorities not acting with respect to a matter of administration pursuant to Section 10(1) of the **Ombudsman Act**.

Our staff has developed information on private agencies and other resources equipped to solve special kinds of problems.

Sometimes, a grievance can best be examined with the involvement of the appropriate elected person, such as the Member of Parliament, MLA., municipal councillor, area representative, school board member or hospital board member.

A significant number of inquiries are received on the subjects of landlord-tenant or employer-employee relationships, dealing with financial institutions and personal debt. When these situations are brought to our attention, my staff contacts the appropriate provincial government office which specializes in these matters and asks that the complainant be telephoned. The cooperation of the staff in these offices has been much appreciated by complainants and this office.

Most professional people are required to belong to an association or society in order to practice their profession. The Ombudsman cannot investigate complaints received about the review carried out by a professional organization of one of its members. This jurisdiction is still unproclaimed in the Schedule of Authorities of the **Ombudsman Act.**

Legal advice by the Ombudsman is often requested by the public. It is not within our authority to give this. We do, however, have information about some excellent resources in the community. Among these are tapes played over the telephone (Dial-A-Law), or a half-hour of legal advice for $10 (Lawyer Referral Service), or advice about court problems or representation in court for certain defined matters (through Legal Services Society or Native Court Workers Program).

12. Statistical Definitions

To assist the reader in understanding the statistical information that precedes the case summaries in Part II of this report, the following definitions are provided. For complete definitions and examples refer to page 73 of the reports.

1. Substantiated

Where, after investigation, all significant elements of the complaint were confirmed.

a) Substantiated but Not Rectified

Where after investigation, it is clear that the complaint has been substantiated and the authority refuses to remedy the situation.

b) Substantiated in Part but Not Rectified

Where, after investigation, it is clear that some elements of a complaint are confirmed while other elements of the complaint were shown to be unfounded or we are not able on the evidence to substantiate those elements. The authority refuses to rectify the substantiated elements of the complaint.

c) Substantiated and Rectified

Where, after investigation, it is clear that the complaint has been substantiated in whole or in part and that a settlement has been reached pursuant to section 16, 22, 23 or 24 which remedies the situation.

d) Substantiated and Rectified in Part

Where, after investigation, it is clear that the complaint has been substantiated in whole or in part and that a settlement has been reached pursuant to sections 16, 22, 23 or 24 which partially remedies the situation.

2. Resolved

Where the complaint is substantially redressed prior to or not as a result of the Office of the Ombudsman's attempts at settlement made pursuant to sections 16, 22 or 23 of the Act.

a) Resolved by the Authority

Where the complaint is substantially redressed by the Authority against whom the complaint was made.

b) Resolved by Another Authority

Where the complaint is substantially redressed by a body other than the Authority against whom the complaint was made.

c) Resolved/Other

Where, due to a change in the circumstances, the grounds for the complaint disappeared without any active involvement on the part of the Ombudsman or an Authority.

3. Not Substantiated

a) Where it is clear that the complainant's allegations of wrongdoing are unfounded.

b) Where, based on the evidence, it is not possible to come to a conclusion.

4. Discontinued/Declined/ Withdrawn/Abandoned

a) Discontinued

Where the Ombudsman began an investigation but subsequently decided not to pursue the matter because of one of the reasons listed in Section 13.

b) Declined

Where the Ombudsman decides not to commence an investigation because of one of the reasons listed in section 13. Some initial inquiries may be made before this decision is arrived at.

c) Withdrawn

Where the complainant notifies the Office of the Ombudsman that they no longer wish to have their complaint pursued by the office.

d) Abandoned

Where the complainant cannot be reached in connection with the matter over which he or she originally complained, or does not respond to requests by the Office of the Ombudsman for further information or fails to respond to letters requesting that the complainant contact the Ombudsman's Office.

In closing my introductory remarks I want to express my appreciation for the opportunity to serve as the Acting Ombudsman during the past several months. It has been a most enlightening and rewarding experience for me. I am very grateful to my staff for their support and loyality to the Office of the Ombudsman. As in any organization, it is very much a team effort that produces the best results and I must credit the staff in very large part for any success we have had in fulfilling the mandate of this very important office.

Part II - Case Summaries

Ministry of Agriculture and Food

Our relationship with the Ministry of Agriculture and Food continues to be positive and cooperative. A recurring problem revealed in the few complaints we have received is the lack of adequate information about the farm insurance and agricultural credit programs. B.C. producers are not receiving sufficient written material outlining the programs available. The Ministry is taking steps to rectify this problem.

Substantiated: rectified after recommendation	-
Substantiated but not rectified	1
Resolved: corrected during investigation	-
Not substantiated	-
Declined, withdrawn discontinued	8
Total number of cases closed	9
Number of cases open December 31, 1985	-

A question of accounts

A man complained to our office in 1983 that his application for assistance under the 1982 Rain Damage Crop Assistance Program was not allowed because the money he had borrowed to meet the eligibility requirements had been placed in his trust fund rather than used directly for farming purposes.

The Ministry took the position that the money borrowed must be used specifically and only for agricultural purposes as set out in Section 2(2) of the *Agricultural Credit Act*.

The complainant argued that all his farm's operating funds are kept in term deposits in his bank. The farm, in turn, borrows money from him for operating expenses. Profits from the farming operation also go through his various term deposit accounts. The money in question was handled in the same way he handles all of his farming financial affairs, he said, and was not intended to be used for investment purposes.

In February, 1985, we concluded that the complaint was substantiated, suggesting the Ministry had relied on a very technical argument that there had not been strict compliance with the requirements of the program. However, the Ministry refused to budge from its position and the complaint was not resolved. (CS85-1)

Ministry of Attorney General

Although the number of complaints we receive about the Ministry of Attorney General seems large, we do not believe it is disproportionately so. The Ministry has many functions ranging from the land title system to the provision of prisons and it affects the lives of many citizens of B.C.

Our relationship with the Ministry has continued to improve over the years, and the Ministry's staff shows a general interest in pinpointing and resolving the problem areas we find. There is still room for improvement, however, in the Office of the Public Trustee which handles the affairs of financially incapable persons and supervises children's estates. We are concerned by the continued high volume of complaints we receive and the slow, impersonal or unresponsive service by this office. The Public Trustee's staff respond when our office becomes involved, but still seem slow in dealing first-hand with their patients.

Substantiated: rectified after recommendation	129
Substantiated but not rectified	1
Resolved: corrected during investigation	302
Not substantiated	190
Declined, withdrawn discontinued	209
Total number of cases closed	831
Number of cases open December 31, 1985	155

Missing insurance blues

A cheque lost during a strike at ICBC resulted in one B.C. driver being rated "uninsurable" for two years and in criminal charges of driving without insurance.

It all started when a woman paid for her insurance through a government agent during an ICBC strike. The cheque went missing and the woman was denied the insurance the cheque had paid for. Because she refused to pay what was called a debt, she was classed as "uninsurable." The cheque was eventually traced through bank records.

The last straw was the driving without insurance charge, to which she pleaded guilty. The woman came to the office of the Ombudsman to "clear" her criminal record.

This was outside the Ombudsman's jurisdiction, but we prepared a history of events for the Ministry for consideration of a clemency order. (CS85-2)

Message mixup meant night in jail

A man contacted the office of the Ombudsman after he had been arrested and held overnight in jail. The arrest was made on a warrant issued when he failed to appear in court on the appointed morning. The man did appear in court that afternoon. He believed that, through some oversight, the warrant had not been cancelled after his appearance.

Our investigation revealed the problem developed between Crown counsel and court administration. Normally, a warrant is cancelled after a person appears in court. In this case, the Crown counsel, judge and court recorder in court in the morning when the warrant was issued were not the same as those who were there that afternoon when the complainant made his appearance. Somehow, the message that he had appeared was not communicated between the various personnel.

Our office was able to negotiate a settlement with the Ministry of Attorney General of $750 for the complainant's unnecessary arrest and detention. (CS85-3)

Generous assistance

Mailing of an elderly woman's tax notice to her old address for three years resulted in her not being able to claim her homeowner and "over 65 years" grants on her property taxes. Her daughter contacted our office.

Our investigation revealed that the error was probably the result of the complainant's lawyer's failure to note the correct address when the property was transferred and not due to any fault of the Land Title staff. Although no government staff had erred, the Surveyor of Taxes generously offered to help resolve the problem. Most of the interest and penalty charges which the complainant had paid were returned to her.(CS85-4)

Death grief

A woman whose daughter had been murdered called our office to complain that the Crown was not appealing the convicted man's sentence which she felt was too short. The man received a five-year sentence.

While the Ombudsman has no authority to investigate the decision of the Crown not to appeal, we were able to arrange a meeting with the complainant and Crown counsel. During that meeting, the woman was given information with respect to contacting the parole board and the prison where the convicted killer would serve his sentence and contacting federal authorities about a possible deportation hearing upon his release.

While the complainant was still devastated over her daughter's death, the opportunity to meet with Crown counsel and understand how she might have some input into the process was a comfort to her. (CS85-5)

Responsibility taken

A young man was safely transported by Sheriff Services between the court and the youth detention centre but his belongings were lost en route. They had been placed in a garbage bag and while it was never confirmed exactly what happened, it seemed likely that the garbage bag was forgotten and then thrown away by a janitor.

When this office became involved, Sheriff Services agreed it was responsible for the lost items. The complainant was reimbursed for the value of his lost belongings. (CS85-6)

Compromise made

A woman placed an urgent call to our office to say the sheriff had just seized her car as the result of a writ in favour of the Employment Standards Branch. The woman's lawyer had told her the action had been done according to the law.

The woman admitted to us that she owed money but explained she had just found new employment which would enable her to repay the debt. However, she needed her car for the job.

Our investigation revealed the sheriff had acted correctly and according to policy but, with the consent of the creditor, a payment schedule was arranged. All parties agreed to the repayment schedule and the car was released to the woman. The cooperation of both Employment Standards and Sheriff Services in arranging this was appreciated. (CS85-7)

Better late than never

A man's financial affairs were taken over by the Public Trustee on his psychiatrist's recommendation, because of the man's alcohol-induced temporary mental dysfunction. After three months, the man felt he had recovered sufficiently to manage for himself again. His psychiatrist concurred and notified the Public Trustee to that effect.

Five months later, there had still been no response by the Public Trustee to the psychiatrist's letter. The complainant and his family members had some difficulties when rent and utility bills were not paid on time. They wished to be allowed to deal with these matters themselves. His daughters tried to contact the Public Trustee. When their messages were not returned after several days, one of them phoned the Ombudsman's office.

We phoned the Public Trustee to learn the complainant had just been released from its care and his accounts completed.

The Ombudsman's office takes no credit for any of this action, which was spurred by the daughters' persistent telephone calls. However, it is disturbing that anyone should be kept on as a patient five months after medical certification had been received to the contrary. A letter to this effect was sent from our office for the Public Trustee's record. The Public Trustee felt sincerely contrite about the neglect of this matter and waived the customary administration fees for actions taken on the patient's behalf during this five-month period and for initial transfer of his capital assets. (CS85-8)

Caught in dispute

A complainant bought a house in Kelowna in May 1985. The house had been owned jointly by an elderly woman and her daughter. He took possession of this house in May and got clear title in July.

The elderly woman had subsequently become a patient of the Public Trustee, and some of her other children had complained to the Public Trustee that the daughter who was part owner had not been dealing entirely honestly with the family assets.

The Public Trustee placed a caveat on the house to protect transactions on it until the patient's interests were decided. This would not normally distress a new homeowner unduly but, in this case, the complainant wished to sell only three or four months later in order to pursue a job offer elsewhere. He could get no response from the Public Trustee through his lawyer or through his own efforts about removing the caveat or rescinding the sale.

When the Ombudsman's office drew the case to the Public Trustee's attention, the house was appraised, recognized as having been sold for fair market value, and the caveat was removed. (CS85-9)

Education saved

A young man's father had died when the boy was 11 and his mother died when he was 15. An uncle had been named in the mother's will as guardian for her children until they were 19 but this uncle, who lived out of the province, abdicated his guardianship role to the Public Trustee.

When the young man turned 19, he wrote the Public Trustee to claim his share of the estate and found that his mother's will had not yet been probated, four years after her death, because of legal problems.

He requested release of some funds so he could support himself and enrol in college. A delay of four months on a decision on this request created financial uncertainty and uncertainty about proceeding with college applications. We contacted the Public Trustee, explained our concern at this delay and requested immediate clarification of the legal issues.

After receiving a legal opinion, the Public Trustee released $25,000, the sum requested, pending settlement of the mother's estate. (CS85-10)

Too little to go around

A man whose financial affairs were being managed by the Public Trustee as the result of a court order complained he did not have enough funds for his own needs, and that the kennel which was caring for his dogs had not been paid.

The complainant's income was limited to three small pensions and he had amassed debts of over $2,000, including kennel fees, before the Public Trustee took over. The Public Trustee apportioned the income to the rest home for the man's care, the kennel for the dogs, and the outstanding debts. The usual five per cent administration fee had been waived to try to spread the money as far as possible. We decided his complaint was unsubstantiated. (CS85-11)

To cuff or not to cuff

When the *Young Offenders Act* came into force, juveniles placed in custody could be classified as either 'open' or 'closed.' Closed juveniles are sentenced to locked institutions. Open juveniles are held in facilities without bars and often allowed to go out into the community to take courses or to work.

Court Services recognized this difference in a policy which instructed its sheriffs to use their discretion in handcuffing open offenders during escorts.

The Ombudsman's office monitored the situation, and became aware that sheriffs were not treating open and closed juveniles differently. At times, this was because the sheriff did not know the classification of the juvenile. At other times, it seemed individual sheriffs were simply used to using the cuffs and did not stop to think if it was appropriate in any individual case. This concern was passed on to Court Services for their consideration.

As a result, a new policy was issued which prohibits the use of handcuffs on open custody juveniles unless a sheriff can show the likelihood of escape or of danger to the prisoner or others. The best thing about this policy is that it recognizes the children's legal rights and makes it clear that it is an acceptable risk to have an occasional escape rather than infringe upon young offenders' rights. (CS85-12)

Hold up in U.S. pensions

The Public Trustee took on the administration of an elderly man's affairs when he became incompetent. The man had a fair amount in savings and was receiving two pensions from his employment in the U.S. Supposedly, these pensions would now be paid to his account at the Public Trustee. But this did not happen because of some confusion between the various agencies involved.

Two years later, the problem was still unresolved. The man had been dead for nearly a year and his executor could not get any clear information from the Public Trustee. When we looked at the Public Trustee's file, it was clear that staff had made many attempts to find the 'missing' money, but were embroiled with an American social security system that did not seem to understand the questions. Letters had gone to and fro. American officials had their own view of the matter. They felt that it was the Public Trustee who was misunderstanding the issues and delaying the process.

We were able to help. The secret was to find someone somewhere in the American system who would be able to make a decision and was sufficiently interested to act. It took two hours telephoning all over the United States, but we found that person and over $7000 U.S. owing to the deceased's estate. (CS85-13)

Fire Commissioner's Discretion

The role of the Fire Commissioner in the community includes fire investigations, fire hazard inspections, as well as regulation of projectionists and movie theatre licences. Our office receives few complaints concerning the work of the Fire Commissioner.

On December 22, 1981, a fire destroyed a Cranbrook delicatessen and restaurant that were to open that day. The Fire Commissioner immediately appointed an investigator who, with insurance agents and the RCMP, began a probe of the ashes. A local paper ran a story that arson was definitely the cause of the fire. No criminal charges were laid.

Our complainant's assets were decimated and his businesses destroyed. He felt that the fire investigation was taking too long and he sought to clear his name of suspicion in the community.

As a result of his complaint, we examined the procedure followed by the Fire Commissioner's office to investigate the cause and origin of a fire. Our office has no authority to investigate the manner in which the RCMP or the insurance companies conduct their

work. The Fire Commissioner's office cooperated fully in supplying documents and files.

We found that the data collection system of the Fire Commissioner depends on local assistants, many of whom are volunteers. While we had concerns about the strengths and weaknesses of this system, we did not make a recommendation in regard to a data collection system as there seems to be no economical or effective way to eliminate reliance on volunteers at this time.

We found that the Fire Commissioner's inspector had initially reported in February 1982 and finally in October 1982. We concluded that the final report did not affect the position taken by the insurance companies or their investigative processes and did not have any direct impact on the complainant.

We recommended that the Fire Commissioner review and clarify the policy in those cases where a suspicious fire has been identified by local assistants and identify the investigative steps and report-writing requirements. We also found that the Fire Commissioner's criteria for holding a public enquiry in the event of a fire were not clear to the regional offices. The Fire Commissioner complied with our recommendations in these areas.

In 1984, the complainant's dispute over insurance settlement came to court. He achieved a measure of success when the court ruled that the opinions of the experts were divided and the circumstantial evidence did not have sufficient force to lead the court to a finding of arson. Soon afterward, an out of court settlement was made.

On a humanitarian basis, we took the position that our complainant would understand the role of the Fire Commissioner better and perhaps find some satisfaction in his quest for information if he were permitted to read the factual reports prepared by the Fire Commissioner's investigator.

The Fire Commissioner would not provide the reports to our complainant. He replied to our recommendation to release these documents arguing our complainant could subpoena the documents in a Supreme Court action. The Fire Commissioner further argued that, if the documents were released, he would lose the qualified privilege of information contained in them.

In our view, the *Fire Services Act* provides protection to the Fire Commissioner and his staff and permits discretion on release of the documents by the Fire Commissioner. Such discretion had not been exercised in the complainant's favour in this case.(CS85-14)

Corrections Branch and Parole Board

This year, our office closed 407 complaints from adult correctional institutions, about half of the 831 cases closed in this ministry. Although slightly more visits were made this year to provincial institutions, there was a 58 per cent increase in the number of telephone contacts with complainants. Inmates are granted telephone calls to our office by all institutions. These calls to Vancouver (1-800-972-8972) or Victoria (1-800-742-6157) may be placed at no charge to the inmate. All residents of the province have equal access to our office.

Of the 407 closed complaints in 1985, 26 per cent were not substantiated and 27 per cent were declined, withdrawn or abandoned. Forty seven per cent of the complaints were substantiated and rectified or resolved. Of the total complaints, 114 dealt with housekeeping or general care areas which includes food, telephones, clothing, personal effects and correspondence, and abuse by inmates or allegations of verbal or physical abuse from staff. Treatment complaints, including all medical and dental services, and program complaints, including visiting, recreation, hobbies and work, shared equally in 40 per cent of all complaints concluded. About 10 per cent of the complaints dealt with case management issues.

Although the Lower Mainland Regional Correctional Centre houses the greatest number of inmates, it does so in what can only be described as inadequate facilities. Many inmates are under-employed in work programs or have no jobs at all. Recreation facilities have been upgraded and expanded so that more daily outdoor exercise is available. The institution is to be commended for introducing more open family visits per month for qualifying inmates and for expanding the educational opportunities for inmates of the West Wing.

The Vancouver Island Regional Correctional Centre completed a transition into new facilities at Victoria with a minimum of difficulties this year. A thorough and fair approach to the monthly assessment of remission was also introduced.

At Prince George, the completion of repairs to the secure institution and the upgrading of the Hutda Lake Camp are noteworthy. It is anticipated that the planning stages for adequate secure facilities at Kamloops will be completed next year.

In addition to visits to adult correctional centres, investigators regularly visited institutions for

young offenders. Complaints from these institutions are also included in the Attorney General statistics.

A number of complaints are received each year that contain allegations of discrimination or prejudice. These complaints often rest on illusive impressions and false expectations. They are difficult to investigate when the nature of the decision by the authorities requires discrimination, judgment or assessment of future behaviour. Subjective components, such as "future risk", are necessarily a part of the decisions which determine an inmate's access to programs such as temporary absence, transfer to reduced security or parole.

This year, the Parole Board of B.C. took a progressive step which may increase an applicant's understanding of the Board's decision, and remove the potential complaint that decisions are improperly discriminatory. The Parole Board tested two models of disclosure of information used in considering a parole application. Obviously, some information cannot be disclosed when it may compromise the safety of the source.

Disclosing more information should be considered in making other decisions within the institution. Even where a decision to deny access to a program is properly made, consistently negative decisions may raise a complaint of prejudice as in the following case.

Staff found not prejudiced

An inmate complained that the staff members of the Lower Mainland Regional Correctional Centre were prejudiced against him and as a result, he was unable to obtain transfers, temporary absences, or parole.

An investigator found that the inmate's admission report contained only information provided by the inmate since he came from another province. He had a serious charge of armed robbery. The classification officer did not know about his behaviour in other institutions and decided to place him in the Lower Mainland Regional Correctional Centre and reassess this decision later. When the inmate applied for a transfer to federal custody, his application was denied because there were insufficient funds for the provincial government to pay the per diem rate to the Federal Corrections Service. No other inmate was transferred to federal custody. We concluded that his application was treated the same as others.

A later request to transfer to a corrections camp was denied because his charge was of a serious nature; he had breached the conditions established for bail and had two escape attempts on his record while at LMRCC. These were valid reasons to deny a transfer to a minimum security camp.

When he applied for a temporary absence, the line staff were very positive in regard to his work habits within the prison. However, the temporary absence plan itself was deemed unsound. He appealed this denial unsuccessfully.

Later a favourable community assessment was prepared and the Parole Board granted parole. We concluded that the staff were not prejudiced against him. They had been cautious but not caustic, reasonably careful but not prejudiced. (CS85-15)

Value of lost goods recognized

Policy develops to standardize procedures and reduce the number of decisions in areas which come up often between inmates and staff. Policy also delineates responsibility within the prison 'community' of guards and inmates. In some cases, policy was ignored, undeveloped or too narrowly interpreted.

An inmate requested the help of the Ombudsman's office to settle a complaint of lost belongings. The inmate claimed that the missing effects had been in his cell when he went to court. When he requested that these items be sent to him, they were nowhere to be found.

The Corrections Branch has established policy of keeping inmate property secure while the inmate is in custody. We supported the inmate in his claim for settlement for the value of these effects because the officers in this particular case had ignored their own policy, failed to adequately document the movement of effects and failed to keep an inventory of goods left in the cell when the inmate was taken to court.

The Corrections Branch initiated contact with the inmate to reimburse this loss. (CS85-16)

Policy for transsexuals

A transsexual inmate complained to the Ombudsman's office that his hormone medication had been terminated by the medical officer. We do not make medical judgments, but we are concerned that medical policy decisions be made on the basis of fair procedures and assessment.

We confirmed the inmate's claim that he was under a physician's care in the community and on medication prior to admission. He admitted to prostituting on the street as a homosexual. He felt that the medical officer's decision to discontinue medication had been based mainly on this fact.

A provisional medical policy for treatment of transsexuals had been developed by the Corrections Branch. The policy required that the branch physician contact the previous physician and that the inmate be stabilized at whatever stage he had achieved on admission.

We found that the decision to withdraw the inmate's treatments was based on a psychological assessment and the doctor's interview. No attempt had been made to discover the inmate's previous treatment. This particular inmate was transferred to another province and we made no recommendation in his specific treatment. We did, however, address the question of the medical policy.

We took the position that it was unreasonable to have a working policy which was neither authorized nor followed in practice. Therefore, we recommended that immediate steps be taken to revise and adopt a policy regarding the treatment of transsexuals and that the revision ensure that the inmate is informed of the decision and the reasons for it where the claim to be a transsexual is rejected. It was essential that an effort be made to contact the inmate's previous physician.

The Corrections Branch reviewed the developing medical policy and rectified the shortcomings which initiated this complaint. (CS85-17)

Alternative travel resolved

Not every case requires full-scale investigation or lengthy correspondence to resolve. When an inmate received a parole release, the Corrections Branch provided a travel warrant for bus fare to enable him to return to the place of sentencing.

The inmate complained that in his physical condition, the bus trip would have been very inconvenient and of considerable discomfort. He said he was unable to arrange alternative transportation with the Corrections Branch on his discharge. The inmate's family had to arrange for air fare.

On examination, we noted that the Corrections Branch had issued a travel warrant for bus fare which the inmate could not cash. We suggested that the Corrections Branch should reimburse the inmate the equivalent cost of bus fare which they would have provided to any other inmate. On review, the Corrections Branch agreed with this suggestion and the matter was resolved. (CS85-18)

Inmate funds still available

An inmate went unlawfully at large in May 1984 and was re-arrested in September 1985. Back in custody, he requested the money in his account at the time of his escape and was informed by officers that this money was forfeited after six months. The inmate contacted the Ombudsman in an effort to recover approximately $130.

While the officers' information was partially correct, they failed to tell him or did not know that such money is held in Victoria and may be applied for through the institution. The Ministry of Finance is prepared to release the money on verification by the institutional director of the amount owing.

The inmate was informed of the correct procedure. The information needed by the officer was incorporated in an instruction manual prepared for financial policy and procedures for all provincial institutions. (CS85-19)

Who done it?

Disciplinary hearings must be conducted so as to demonstrate a high standard of competence and fairness in the hearing and disposition stages. The officers conducting the hearing have the power to remove remission from the inmate and thus extend the length of time the inmate must spend in custody. The panel may also confine the inmate to a segregation cell for a period not exceeding 15 days on each allegation. The process followed by the officers and the disposition of the panel may be challenged in the courts at great cost to both the inmate and the administration. Thus, it is to the advantage of the Corrections Branch to improve the disciplinary processes and assist officers in making substantive decisions.

In one case, two inmates shared a common segregation cell in a secure institution. When a guard passed the cell, water from the cell was thrown on his back. He could not identify the person who threw the water from the cell and so he charged both inmates. The disciplinary panel considered the matter and found both inmates guilty of assault on a balance of probabilities argument. One of the inmates complained to the Ombudsman's office that he had been found guilty.

On investigation, we concluded that the finding was arbitrary and therefore unjust. Proof of the identity of the perpetrator is an essential element of an offence. Because there was no proof in this case, there could be no conviction. A balance of probabilities might suggest that one of them was guilty of assault, but which one? In order to lay a charge, reasonable and probable grounds must exist. On this basis, there was sufficient evidence to lay a charge. However, in our view there was not enough proof to justify a conviction.

The Corrections Branch used this case and others to assist all centres toward a better understanding

of the rules of evidence and fair procedures for the disciplinary panel. Secondly, the Corrections Branch agreed that each of the complainant's files would have an entry made that the disciplinary panel finding was reviewed by the Ombudsman who concluded that the panel lacked sufficient evidence to sustain a finding of guilt against either of the two inmates. (CS85-20)

Inmate confused

An inmate received notice that he had failed to earn some of his remission for a month during which an internal disciplinary court gave him 15 days in segregation as punishment. He complained to the Ombudsman's office that he should have been told of the loss of remission at the disciplinary hearing rather than at the end of the month.

The inmate was confused between the loss of remission as a punishment and the failure to earn remission which is built into the legislation. An inmate earns 15 days remission each month for industrious work on the various programs within the prison. The prison administration may, as a result of a charge and conviction for a disciplinary offence, remove remission from the inmate which he has previously earned.

The investigation also showed that while the regulations provide for an appeal of the decision on the amount earned each month by the inmate, the provincial institutions followed differing procedures in advising inmates of their right to appeal this award.

The inmate's confusion was clarified by Corrections staff and by discussion with the Ombudsman's office. However, all inmates would benefit if the appeal information was incorporated into the provincial form used to advise them of the award. The Corrections Branch accepted this recommendation. (CS85-21)

Too many accounts

An inmate was transferred from Twin Maples Correctional Centre to Chilliwack River Correctional Centre and then back to the Lower Mainland Regional Correctional Centre (LMRCC) where he complained that wages he had earned at Twin Maples and money held at Chilliwack River had not been credited to his inmate account at LMRCC.

When Twin Maples was contacted by the Ombudsman's office, officers reviewed the inmate's pay slips and confirmed an error in pay. That amount was sent to his account at LMRCC. The inmate's account at Chilliwack River was not sent because he had requested that the money be held until he returned from a brief stay at Oakalla where he was to receive some medical treatment. Subsequent to our enquiry, his account was consolidated with his other funds.

Because inmates may transfer repeatedly during their sentence, the job of keeping their accounts up-to-date is difficult. Recently inmate accounts have been placed on a computer system which should reduce the delays. (CS85-22)

Inmates gain information

An inmate complained that he was unable to access personal information held by federal authorities because of a lack of personal information indexes in provincial prisons.

We contacted the Privacy Commissioner in Ottawa who sent a copy of the index to the Lower Mainland Regional Correctional Centre. However, this only provided one provincial institution with the index. As a result of this call, the Privacy Commissioner approached the federal Treasury Board which agreed to distribute personal information indexes to all provincial prisons in Canada. (CS85-23)

Success and failure

While the Ombudsman may succeed in recommending changes which the Corrections Branch adopts, a capricious human element often determines whether the change will improve the situation identified by a complaint. Many people should be credited for their creative efforts to make the changes in program and policy work to the advantage of all.

Five days before his release, an inmate requested help from the Ombudsman to resolve conflicting probation orders. Under the first order, he was required to report to the Vancouver probation office. The second order restricted him from being in Vancouver and ordered him to leave the province within 48 hours. He needed a place to stay, some survival money and a lawyer to represent him in court.

The probation officer and Crown Prosecutor's office assisted by setting a court date within three days and arranging for the inmate to be brought from the Alouette River Correctional Centre to the Vancouver court. The Legal Services Society also sent a representative to talk to the inmate about a lawyer to represent him. Emergency MHR services in New Westminster provided shelter and referral to a residence in North Vancouver.

When the judge reviewed the probation orders, he revised the orders allowing the inmate to remain in B.C. and reside in North Vancouver.

He also ordered our complainant to report by Monday of the next week to the North Vancouver probation office. Sadly, the inmate failed to report as required in spite of the many people who made a special effort to help him re-enter the community. (CS85-24)

Mail delayed

An inmate complained to the Ombudsman's office that the mail service at the Vancouver Pretrial Service Centre was lacking. He had been told by a staff member that some mail addressed to him was in the mail room at the Vancouver Pretrial Service Centre. The inmate did not receive this mail until two days later.

A new mail system had been implemented two weeks before our office received this complaint. An investigation revealed that the mail had not been sorted on the days in question. It was suggested that a date-received stamp be used during the processing of the mail. This will allow the inmate to know if there has been a delay in the delivery of his mail. The institution agreed to use a date stamp for incoming mail. (CS85-25)

His money was on the table

Most juvenile centres hold residents responsible for any damage they do to the facility or equipment. A youth complained to our office that the amount he was charged for damaging a table top was unfair.

He had scratched his initials into the table and was charged $7.50. The youth felt that as the table was in poor condition, charging him $7.50 was unreasonable.

While we can understand that $7.50 seems like a lot of money to a youth who has a very limited income, we found the amount was not unreasonable and we informed the complainant that we were unable to substantiate his complaint. (CS85-26)

New training required

A boy complained that while he was in a correctional facility, a staff member turned on him, threw him on the floor and dragged him along a carpet. As a result, he had carpet burns on both of his knees. He thought the staff member's action was unreasonable because the action was unprovoked. The boy explained that several other residents witnessed the incident.

Because of the nature of the complaint, it was referred to the Ministry of Human Resources for investigation, since that ministry has the most expertise in investigating child abuse allegations.

A social worker investigated the matter and found that the staff member had acted inappropriately. As a result of this finding, the director of the facility arranged for the staff member to take training in non-violent crisis intervention. (CS85-27)

Ministry of Consumer and Corporate Affairs

The Ministry of Consumer and Corporate Affairs comprises many branches and agencies responsible for a wide range of functions including:

- the licensing of travel service agencies, motor vehicle dealers, persons purchasing and reselling liquor, insurance and real estate agents and persons selling securities, mortgages and investments;
- the registration and financial monitoring of provincial companies, societies, credit unions, cooperatives and trust companies; and
- the provision of services related to disputes between landlords and tenants and complaints concerning infractions of consumer legislation.

Considering the extent of the Ministry's activities, we receive very few complaints against it. The 61 complaints received in 1985 represent a 41 per cent decrease from the 103 complaints in 1984. It appears that this reduced volume is largely due to the elimination of some consumer services and the restructuring of residential tenancy services.

The few investigations we have found it necessary to conduct have received the full support and cooperation of the Ministry at all levels. We have appreciated the willingness of Ministry officials to accept our suggestions and to resolve complaints on an informal basis.

Substantiated: rectified after recommendation	2
Substantiated but not rectified	-
Resolved: corrected during investigation	10
Not substantiated	22
Declined, withdrawn discontinued	27
Total number of cases closed	61
Number of cases open December 31, 1985	16

Four years and still waiting

The Travel Assurance Fund is operated by the provincial government through a board and funded by a levy on all registered travel agents in British Columbia. It is designed to compensate persons for their loss arising out of the insolvency or bankruptcy of a registered travel agent.

A Calgary resident made reservations with a registered Vancouver travel agent for a tour to California. She put down a deposit of $50. Before the tour took place the travel agency went bankrupt and she lost her deposit. She applied for compensation from the Travel Assurance Fund and was turned down because she was not a resident of British Columbia and the travel services she had contracted were not wholly within British Columbia.

The *Travel Agents Act*, which establishes the Travel Assurance Fund, made no distinction between residents of British Columbia and non-residents. However, a Cabinet regulation stipulated that compensation was available only to residents of British Columbia or to non-residents of British Columbia who had purchased travel services wholly located in British Columbia. This woman did not meet these criteria. In October 1981, she complained to the office of the B.C. Ombudsman.

The Ombudsman found that there was no intent in the Act to restrict non-resident access to the fund. He also found that the regulation was improperly discriminatory. The purpose of the legislation was to protect consumers. Both residents and non-residents were equally consumers of the service and should be entitled to the same protection.

In January 1982, the Ombudsman recommended the Ministry of Consumer and Corporate Affairs consider eliminating the distinction based on residence. The Ministry said it was initiating the necessary steps to review the policy intent of this section and that appropriate changes would be made to the regulations and Act if called for. Everything seemed to be moving along smoothly.

In October 1982, an amendment to the *Travel Agents Act* was passed by the Legislature. However, the amendment did not implement the Ombudsman's recommendation to eliminate the discriminatory provision of the regulations. Instead, it clarified the authority of the Cabinet to make regulations which discriminated on the basis of residence.

Obviously, there had been some misunderstanding. After further meetings, the ministry agreed to consider the problem further and come up with a proposal which would meet the concern of the Ombudsman.

The Ministry's concern was that groups of individuals outside the province could take advantage of the Travel Assurance Fund by simply booking their tours through a British Columbia agent. This would extend protection to those who were never intended to be covered.

Our view was that there ought to be a more refined way of preventing such abuses without restricting legitimate claims from non-residents.

In June 1983, the Ministry reported that amendments to the regulations were being drafted and that this issue was one of the matters being considered. Our numerous requests for information about the new regulations proved fruitless. In July 1985, the Minister

wrote to the Ombudsman to say that the issue was among a number of regulatory changes being contemplated.

Since the Ministry has committed itself to deal with the issue, there seems to be little more that the Ombudsman can do to effect a resolution. Accordingly, we have closed our file on the matter. (CS85-28)

Savings mean a lot

An elderly woman complained to our office that her broker at a trust company would not return money owed to her. She had been trying to get this money for more than two years, and felt she was being stalled. The broker told her he could not afford to pay her back until next year, and gave her an IOU for $65 which he later refused to honour.

Our staff advised the Ministry of Consumer and Corporate Affairs of this odd situation. The Ministry decided to investigate this broker's actions. Though the broker's behaviour seemed unusual, no evidence of wrong-doing was found.

It seemed that our elderly complainant would lose a portion of her savings. However, this story had a happy ending. At the close of the investigation, the broker wrote her a cheque for the full amount of his IOU. (CS85-29)

Incomplete investigation requires explanation

A member of a credit union complained that the Superintendent of Credit Unions, Cooperatives and Trusts failed to provide the assistance necessary to resolve his dispute with a credit union. He claimed that the credit union reneged on a written agreement to provide him with a line of credit of up to $100,000 at 11 per cent interest for 15 years from August 29, 1978.

Contrary to the complainant's expectations, the Superintendent did not order the full reinstatement of his line of credit. The complainant believed that the Superintendent's decision was based on an incomplete investigation and that it might have been different had the Superintendent kept his promise to interview two former credit union employees who were involved in drawing up the original agreement. The Superintendent did not report the results of his investigation to the complainant in writing and did not explain why he considered the evidence of the two former employees to be irrelevant.

After discussing the complainant's concerns with our office, a representative of the Superintendent agreed to review the complainant's file and to reconsider whether further action or investigation was necessary. He also agreed to provide the complainant with written reasons for the superintendent's final decision.

On the basis of these agreements, the complainant considered his complaint against the Superintendent to be resolved. (CS85-30)

Ministry of Education

In 1985, Ministry of Education staff continued to provide a high level of cooperation with our office. In our dealings, the Ministry is notable for its interest in problem-solving and its willingness to learn as well as to teach.

Some cases again brought to the Ombudsman's attention the lack of proper appeal mechanisms for teachers who lose their positions or tenure. In light of similar cases in previous years, our office brought the new cases to the Ministry's attention. We also took advantage of the fact that the *School Act* is currently being reviewed to reiterate our concerns and to suggest some general amendments involving appeal provisions.

Substantiated: rectified after recommendation	1
Substantiated but not rectified	-
Resolved: corrected during investigation	14
Not substantiated	8
Declined, withdrawn discontinued	15
Total number of cases closed	38
Number of cases open December 31, 1985	2

Course, loan extended

A woman told us that the British Columbia Student Assistance Program (BCSAP) had said it could not extend her husband's student loan because the college calendar stated his course duration was only five months. She said it was part of the "TRAC" program, which allows the student to pace himself. Her husband, a mature student, was working hard to finish in about seven months, while some students took as long as 10 months. He needed a couple of months more funding in order to complete his studies.

Inquiries by our offices revealed that the college financial aid office was making attempts to obtain a bursary for the student. Coincidentally, the college - which had been reviewing the "TRAC" program - decided to amend its calender to make the estimated course duration nine months instead of five. The complainant was very happy, as her husband would now be able to reapply for further student loan monies and complete his course. (CS85-31)

Delays in loan denial

The mother of a student attending an out-of-province beauty school said her daughter had experienced delay in the processing of her British Columbia Student Assistance Program application. She had finally been denied funding because the school was not a "designated" out-of-province body.

Inquiries by our office revealed that there had been delays, due to both staff and student errors but that the school could possibly be designated if it completed certain required forms. We contacted the school principal to clarify BCSAP's needs and criteria and then let BCSAP know that the designation material would be forthcoming shortly. The Ministry of Education's Student Services branch agreed to process the application as soon as the documentation was received. (CS85-32)

Loan process monitored

The Ombudsman's Office has the power to investigate matters of concern on its own initiative. Examples of two such matters involving the Ministry of Education follow.

In the past, we made some suggestions on the British Columbia Student Assistance Program (BCSAP) appeal process to help ensure administrative fairness. The concern was that full and complete reasons for denials of Student Loans Committee appeals may not always be provided to appellants. Samplings of appeal results were reviewed in 1985 and it was found that, in general, reasons were provided, albeit fairly briefly. We pointed out where provision of more details would be advisable and indicated we would continue to monitor decision letters and appeal results in the future.

In the second example, we noted that the Student Services Branch which administers student loans used Gold Book figures to assess the value of applicants' vehicles, instead of taking the student's word or giving them the benefit of the doubt, pending submission of further documentation. A high value being placed on a student's car may result in a decreased loan or even no loan at all.

After discussion with our office, Student Services agreed to amend its information kits to warn students with vehicles valued over $3200 in the current Gold Book to provide documentation as to their car's value. Two appraisals from licensed dealers would be appropriate. This would give the student the opportunity to avoid a low award at the outset and delays caused by a reassessment. (CS85-33)

Unnecessary questions

A student complained that the detailed information regarding her former spouse required on the British

Columbia Student Assistance Program loan application form was not necessary and an infringement of her privacy. She felt the issue needed attention although her loan application had already been dealt with.

The matter was brought to the attention of the Ministry of Education's Student Services section. That department informed the Ombudsman's Office that the matter was, indeed, of concern and forms were to be revised for the 1986-87 school year. The change would mean separated or divorced applicants would be asked to indicate their "date of separation" only. Further details, where needed, would then be requested by the school's financial aid officer or by Student Services. (CS85-34)

Students on probation

Occasionally we receive complaints concerning colleges and, in the following example, intervened to resolve a conflict between students and their instructor.

A student in a social services program at one of the colleges had made herself unpopular by openly questioning a certain staff member's morals. She felt he did not set the sort of personal example necessary to the teaching profession. The teacher, in turn, suggested this conduct indicated the student might not have the proper professional, detached and discreet attitude for her chosen career.

This instructor, in the course of counselling all students in his program, chose to put five or six of them on probation for the first term of their second year. They would be allowed to participate in the class for the first term, provided their attitude was satisfactory, and the instructor would decide at the end of that time whether they could continue for the rest of the year. Some of the probationary terms were based on behaviour outside of class, as was the case with our complainant, and some were for academic reasons.

The college's academic administration was not aware of the letters of probation. Further, officials agreed that nowhere in the policies of the college was there any reference to probationary status, academic or otherwise. The probationary stigma was removed from the complainant and all others in similar position. (CS85-35)

Examining their exams

An organization representing teachers contacted our office with the concern that students could not get sufficient feedback on their performance on the provincial examinations. There were many administrative procedures in place to guarantee good marking, allow students to appeal their mark or rewrite, but the teachers felt there was a gap. Students could not really figure out where they had gone wrong, if they had, so it was difficult to learn by one's mistakes.

When we discussed this problem with the Ministry of Education, we realized how many checks and balances were already in the system, but still felt that the teachers had a point. The Ministry agreed to add a process.

The system now works this way: after writing and being marked, a student who feels undergraded can ask for a remark (appeal) or can rewrite the examination. Once all that is finished, if the student wants to learn by his mistakes, he can go to school to see examples of the correct answers. If he is still anxious to know more, he can contact the Ministry, and staff will give whatever individual feedback they can. (CS85-36)

Ministry of Energy, Mines and Petroleum Resources

As in previous years, there were relatively few complaints received concerning this Ministry. The majority of them concerned some aspect of mineral claims. Our office has a good working relationship with Ministry officials as the following case summary illustrates.

Substantiated: rectified after recommendation	-
Substantiated but not rectified	2
Resolved: corrected during investigation	3
Not substantiated	4
Declined, withdrawn discontinued	7
Total number of cases closed	16
Number of cases open December 31, 1985	3

Claim applicant gets equal treatment

A Terrace resident was interested in applying for certain reverted Crown granted mineral claims. He made inquiries about them and discovered that the claims would forfeit to the Crown on August 24, 1984. On the morning of August 25, 1984, he attempted to apply for the claims. He was informed by an employee of the Smithers office that the previous claim holder had died on March 17, 1984 and in such cases, the *Mineral Act* prevented relocation of the claims for one year after the holder's date of death.

On March 18, 1985, this individual could not submit an application as he was in hospital with an eye injury. On March 22, 1985, he tried to apply for the reverted claims at the Ministry's Terrace office but was told that he had to apply in Smithers. On March 25, 1985, he tried to apply at the Smither's office but was informed that an application had been accepted from another applicant on February 12, 1985. This application had been deemed accepted as of March 18 and was successful as no other applications had been received on that day.

The Terrace resident appealed to the Gold Commissioner in Smithers. The Gold Commissioner denied the appeal because the Terrace resident had not applied for the claims until March 25, 1985, one week after the other application was accepted. The Terrace resident then contacted our office.

Upon review, it appeared unfair that the complainant's application was not accepted during the one-year period after the death of the previous holder, but that another application was. The situation was discussed with officials in the Ministry's Mineral Titles Branch in Victoria. After review, they agreed to resolve the complaint by deeming both parties to have applied by mail prior to the first available date of disposition.

The Gold Commissioner in Smithers was to inform both parties of the situation and give them two weeks to determine if they could agree on a disposition of the claims. If, after two weeks, no agreement had been reached, the commissioner would make a draw as outlined in the *Mineral Act* regulations.

We had ensured that our complainant and the other applicant would be treated equally and we considered the complaint resolved. (CS85-37)

Ministry of Environment

Issues relating to the Ministry of Environment cover a broad area, and include land erosion, industrial and human waste disposal, water courses, water utilities, trap line concerns, and wildlife management. Complaints are oriented toward either preserving the environment or seeking compensation where the environment itself has contributed in some way to personal loss.

Demonstrating one example is an investigation in the East Kootenay region into forage crop damage by elk. A significant development was achieved into this lengthy investigation in 1985 when the Ministry employed an independent consultant whose report confirms the damage done and supports recommendations for compensation and improved wildlife management. Issues also arise that involve but exceed provincial authority, extending into federal, municipal or citizen responsibilities. Encouraging results have been achieved by the Ombudsman's office acting as a coordinator with other authorities and agencies in an effort to reach a solution.

Substantiated: rectified after recommendation	2
Substantiated but not rectified	-
Resolved: corrected during investigation	29
Not substantiated	23
Declined, withdrawn discontinued	37
Total number of cases closed	91
Number of cases open December 31, 1985	34

Farm, habitat both winners

A farm owner complained that, because of a lack of maintenance, an ocean-front dyke on CNR property beyond his farm had been breached. This allowed the ocean to breach his own dyke on the boundary of his land and damage the farm land with salt water.

The farm, in the rich-soiled Cowichan Estuary, was in two parcels of 65 and 17 hectares, split by a river. Half of the small piece was flooded by salt water. The farm owner asserted he could have maintained his own dyke had the outer dyke been properly maintained.

The outer dyke no longer existed. The land between the dykes had been reclaimed by the ocean as tidal mud flats. Apart from the encroaching damage to ideal farmland and an influence on the water table height, there was no economical or ecological reason to replace the outer dyke.

Agricultural interests shared the area with limited industrial activity, recreational activities and wildfowl and fish habitat. Over the years, the estuary had been the subject of extensive study, particularly by the Ministry of Environment. A Ministry task force report advocated retention of agriculture, restriction of industrial development and enhancement, wherever possible, of wildfowl and fish habitat.

The Ministry had offered to help under the River Protection Assistance Program to pay 75 per cent of the costs of a dyke. One estimate placed the cost to protect just the home farm at $207,000 and $482,000 for both the home farm and the eight good hectares remaining on the second parcel.

There was a long-standing interest held by the Nature Trust of British Columbia to develop wildlife habitat in the Cowichan Estuary and by Ducks Unlimited Canada whose studies showed an unhealthy decline in the estuary's duck population. The Federal Department of Fisheries and Oceans was also attempting to identify an area suitable for fish rearing in a "pond environment" where the salinity could be controlled by fresh water inflow. The 17-hectare parcel had elements of interest to all authorities.

Equally important was the permanent security of the home farm with its rich agricultural and historical qualities.

Over a period of 10 months, our original role of investigator evolved through that of negotiator to a role of coordinator. What started as a complaint became a cooperative effort which achieved the following results:

(a) The 17-hectare parcel was purchased by the Nature Trust of British Columbia. Contributing to the purchase were Ducks Unlimited Canada and another publicly-funded organization, Habitat Canada.
(b) The Nature Trust deeded the land to the Ministry of Environment with the condition that it be retained as wildlife habitat. Design would involve all parties - private, provincial and federal.
(c) The Ministry of Environment invoked the River Protection Assistance Program to protect the home farm, involving a dyke approximately two kilometres in length at a shared cost of $207,000.
(d) The Federal Department of Fisheries and Oceans contributed financial assistance to the land owner to construct the dyke and secured its voice in the development of fish rearing ponds in the 17-hectare parcel.
(e) Forage crop development on any available area left on the 17 hectares will be done by the farm owner in keeping with requirements for wild fowl winter feeding.

The acquisition of this 17 hectares triggered acquisi-

tion of several tidal-flat parcels from the CNR now totally claimed by the ocean.(CS85-38)

Farmers fight fish ladder

A complaint was lodged on behalf of the farming interests in the Inonoaklin Valley about a proposed fish ladder.

The ladder was to allow migrant fish access to the Inonoaklin River from the Arrow Lake to spawn. Original spawning grounds were flooded when the Arrow Lakes were created with the construction of the Hydro Keenleyside Dam project in the 1960s and fish populations declined. An extensive fish ladder of some 22 metres would overcome the varying water levels in the Arrow Lakes and bypass two waterfalls near the mouth of this river.

The concern of this Inonoaklin community was that the only source of surface water for irrigation and livestock watering was the limited volume of the Inonoaklin River. One complainant asserted the water resource barely met existing agricultural requirements without considering potential expansion and was insufficient to accommodate the proposed three species of fish. Restrictions on agricultural interests, if fish were allowed, would inpose real hardship while other options existed nearby for fish habitat development that would not involve any land of the Inonoaklin or any other existing interest.

It appeared that two ministries, Agriculture and Environment, held competing interests. The ministries had embarked upon a cooperative program and agreed to combine their studies into a joint report to be prepared by the Ministry of Environment. But environmental interests appeared to overshadow those of agriculture. The community's fears appeared well-founded.

This office did not pursue the issue because construction of the fish ladder had not been finalized. But what was made evident by the Ombudsman's involvement was the absence of material to answer the farming community's questions on the use of alternative, non-agricultural areas. Both ministries agreed that further study was required on the economic and ecological factors and agreed to submit individual reports on their expanded studies. Having created this atmosphere to ensure such data is available, the investigation was discontinued.(CS85-39)

Ministry of Finance

The number of complaints received concerning this Ministry decreased by almost 50 per cent from 1984. In that year, there had been many complaints from Indian Bands concerning the imposition of social service tax on long-distance phone calls originating from a reserve. Most complaints received in 1985 against this Ministry concerned the Consumer Taxation Branch which administers the *Social Service Tax Act* and the Real Property Branch which administers the *Taxation (Rural Area) Act*.

Complaints in the former group often stem from the public's lack of familiarity with the Act or its regulations. In these cases, our office attempts to explain the relevant legislation when we cannot substantiate the complaint. Lack of knowledge of relevant legislation may also be the origin of some complaints against the Real Property Branch. Others stemmed from situations in which an individual was issued a permit or licence by another Ministry but was unaware that a property tax liability flowed from the tenure.

Substantiated: rectified after recommendation	1
Substantiated but not rectified	-
Resolved: corrected during investigation	11
Not substantiated	23
Declined, withdrawn discontinued	17
Total number of cases closed	52
Number of cases open December 31, 1985	7

Who pays the taxes?

The Ministry of Forests issues Special Use Permits over Crown Land for purposes (other than those enumerated in the *Forest Act*) compatible with good forest management.

On March 30, 1984, the complainant was issued a Special Use Permit (SUP) over several hectares of land for firewood storage. The permit specified that he would be responsible for annual rent - $150 for the first year. The permit also required him to deposit $1500 with the regional manager which would be used to clean-up the area if the permittee failed to comply with all the conditions of the permit. There was no mention in the Special Use Permit or a covering letter that the permittee was responsible for paying the property taxes.

When the man received an assessment from the Surveyor of Taxes for almost $1400, he contacted our office. He said he never would have leased the land if he had known that he would be liable for the property taxes. Furthermore, he had never actually used the land to store firewood or for any other purpose.

According to the *Taxation (Rural Area) Act*, a person in possession of Crown Land that is held under a lease is an "occupier" and is liable for the property taxes. However, in 1982, a B.C. Court of Appeal case decided that a lessee of Crown land is taxable as an occupier under the *Taxation (Rural Area) Act* only on the land of which he has possession in fact. The lessee is not assessable or taxable on land which he has not reduced to possession, i.e. used in any way.

An investigator from the Ombudsman's office contacted the local assessor who agreed that the lessee would not be liable for the taxes if he had not used the property in any way. The complainant was advised to write a letter to this effect to the assessor who then dropped the lessee from the assessment rolls. (CS85-40)

One bidder avoids federal tax

An individual in a contracting business complained he was at a disadvantage when submitting bids to the Ministry's Purchasing Commission. He was required to include an amount for federal sales tax within his bid but organizations such as those staffed by handicapped people were exempt from the federal tax and therefore were not required to include an amount for federal tax within their bids. The bid of such an organization had been accepted over that of the complainant's. His had been only $80 higher even though it had included an amount of $950 for federal sales tax.

According to Part XIV of Schedule III of the *Excise Tax Act*, all goods manufactured or produced in Canada by the labour of individuals who are blind, deaf and dumb, mentally retarded or in any other manner mentally or physically handicapped are exempt from the federal sales tax. Hence, our office concluded that the Purchasing Commission was acting correctly in accepting bids that did not include the federal tax from certain organizations.(CS85-41)

Lessee not sought for taxes

Our office was contacted by a lawyer on behalf of a limited company which owned a parcel of land in the Cariboo area. This company had leased the land to a second company. The lease provided that the lessee could construct buildings and improvements on the property and that the lessee would be responsible for taxes assessed against both the property and the improvements. The lessee had abandoned the property without paying the 1984 taxes.

The complainant was of the opinion that the *Taxation (Rural Area) Act* empowered the Surveyor of Taxes to recover the taxes owing from the lessee as well as from the owner of the land (the lessor). He complained that the Surveyor's refusal to do so was unfair to his client.

After looking into the matter, we supported the position of the Surveyor of Taxes, who suggested that the Ministry should use the sweeping powers provided by the Act very cautiously. To use these powers against the lessee while a full range of options remained available to the branch would be contrary to past practice and could be interpreted as favouring the lessor. The dispute between the lessor and the lessee is essentially a private one; the lessor can protect himself by the wording of the lease.

Our office agreed with the Surveyor's position that the option of pursuing the lessee for taxes owing should only be exercised if it were unlikely that the taxes owing could be collected from the owner of the property. (CS85-42)

Ministry of Forests

As in previous years, many of the complaints about the Ministry of Forests pertained to timber tenures. These ranged from complaints about timber sale licences under the Small Business Enterprise Program to those about major tree farm licensees.

The one case which was substantiated but not rectified was reported in Public Report No. 4 "The Nishga Tribal Council and Tree Farm Licence No. 1" in June of 1985.

During the past year, there was an increase in the number of complaints received concerning the Protection Branch of the Ministry of Forests. These stemmed from the extreme fire situation in the province during the summer of 1985. Generally speaking, our investigations revealed that the Ministry's response to the emergency situation was commendable.

Substantiated: rectified after recommendation	1
Substantiated but not rectified	1
Resolved: corrected during investigation	16
Not substantiated	19
Declined, withdrawn discontinued	33
Total number of cases closed	70
Number of cases open December 31, 1985	12

Firefighters and training

Complaints were received that the Ministry of Forests was only hiring locally for the spate of serious forest fires which raged in June and July of 1985. The complainants had seen news coverage of inexperienced teenagers fighting the blazes, and thought that if the Ministry hired province-wide and transported the crews, more trained manpower would be available.

The Ministry does have a scheme for keeping a pool of trained labour on which it can draw. Each district runs training courses, and keeps lists of trained or experienced people. These people are called in if the initial attack force of permanent staff cannot cope with the fire. The season was so bad that the pool of trained people was not always enough. Some areas were forced to either 'borrow' from other regions, or hire locally and run the recruits through fast training sessions. The reality of the situation was not always clearly covered by the media. Television coverage would often include shots of volunteer fire fighters who may have been on the fire line despite the best efforts of the Ministry to keep the public away from unsafe situations.

In general, it was felt that the Ministry was doing its best to cope in an emergency situation, and the

complainants were informed of this finding. (CS85-43)

Forest worker reinstated

A non-union casual member of a forestry work crew was summarily fired, ostensibly for lateness. Some witnesses felt the firing was without adequate reason, but happened because of the supervisor's temporary and unusual bad mood.

The Ombudsman took no credit for the reinstatement of this person on probation with the loss of five days pay during the period of "suspension." We do feel, however, that the fact the complaint was brought to our attention may have softened somewhat what could have been a rather bleak outcome. (CS85-44)

Notice late on stumpage rate

Before December 1, 1982, the stumpage rate for fir was $13.80 per cubic metre. In a December 20, 1982 letter, a company was informed that effective December 1, 1982, the revised stumpage rate for fir was $13.86 per cubic metre. On the basis of this notice, the company continued to log.

On January 27, 1983, the company received notification from the Ministry of Forests dated January 11, 1983 that effective December 1, 1982, the revised stumpage rate for fir was $27.96 per cubic metre. The president of the company contacted the local ranger station and was informed that the rate was $13.86. However, on further inquiry, he was informed that due to a computer error, the company had not been informed of the change to the higher rate in December 1982.

The company had logged for approximately two months without being informed that the stumpage rates had more than doubled. Had he been informed of the change in the stumpage rates at the beginning of December, 1982, the president said he would have stopped logging immediately. As a result of not receiving timely notice, the company lost approximately $15,000.

In February 1983, the president wrote to the Minister of Forests and requested a rollback of the stumpage rates. The Minister was not willing to do so, even though he acknowledged that "an erroneous stumpage adjustment letter" had been mailed out on December 20, 1982.

The president contacted the Ombudsman's Office in the summer of 1984. After many discussions with employees in the Ministry of Forests, the Ombudsman sent a preliminary report to the Deputy Minister of Forests on May 28, 1985. On December 3, 1985, the Deputy Minister replied that the Ministry would credit the company's account with the amount overcharged as a result of the erroneous stumpage adjustment letter. (CS85-45)

Ministry of Health

There has been a slow but steady growth in the number of complaints we receive about the Ministry of Health. The large majority of these cases relate to the Medical Services Program and to the care given in the Ministry's facilities. The Ministry has shown a willingness to work in cooperation with our staff and a commitment to fast and effective service to the public. The increase in the number of complaints is due to combining certain health institution complaints with the Ministry statistics. This resulted in an increase of 219 cases.

Substantiated: rectified after recommendation	4
Substantiated but not rectified	-
Resolved: corrected during investigation	285
Not substantiated	105
Declined, withdrawn discontinued	175
Total number of cases closed	569
Number of cases open December 31, 1985	129

Gap in coverage covered

A woman complained that there was a gap in her medical services coverage. In this period, she had used her medical number and now her doctor had given the outstanding bills to a collection agency. She wanted to know whether through some back payment the gap could be bridged.

We found when she married, she added her husband to her medical coverage. Later, when she left her job, she assumed her husband covered her medical premiums through his employer. It appeared he had applied to have her placed as a dependant on his medical services number but, by some administrative error at his company, the necessary documents were not sent to the Medical Services Plan. She did not have medical coverage and the problem was not discovered for 16 months.

Our complainant maintained it was the company's error even though the company would not admit to it. She said she had a similar problem with this company over her dental coverage and the company had back-paid the premiums. Now the company claimed it was unable to back-pay her medical services coverage because the Medical Services Plan would not agree to it.

We established with the Medical Services Plan that it would bridge the gap if the company agreed to pay the premiums for that time. The company agreed to do this and the Medical Services Plan honoured her doctor's bills. (CS85-46)

Extra-provincial student covered

A young man complained that the Medical Services Plan had cancelled his medical coverage. Although a resident of British Columbia, he attended university outside of the province. After 12 months at university, the Medical Services Plan cancelled his medical coverage because he had been living outside of the province for a year. The young man discovered the problem when he returned home for a visit at the end of the summer and saw his allergist. The Medical Services Plan rejected his allergist's bill.

Our investigation revealed the problem arose from an administrative error. The plan reinstated his benefits and honoured his allergist's bill. B.C. students living outside of the province do qualify for Medical Services Plan coverage. (CS85-47)

Out-of-province eye examination

A woman complained that the Medical Services Plan would not pay for her visit to an optometrist in Whitehorse, Yukon. She explained that she needs an eye examination each year. Where she lives in Atlin, there is no professional qualified to examine her eyes. The nearest community with a qualified professional is Whitehorse and it has only an optometrist.

Under the *Medical Services Act* regulations, a visit to an ophthalmologist out of province is covered. However, a visit to an optometrist is considered to be an extended health benefit and is only covered by the plan if the service is rendered in the province. The woman thought the decision was unfair because she would have to travel a considerable distance to see an ophthalmologist in B.C.

The plan has recently changed its policy and it will pay for medical services which are provided out of province for people living near the border of B.C. and where the nearest centre which offers the service is in the neighbouring province. This policy also applies to other extended health services under the plan. The woman agreed to submit the claim to the plan directly. (CS85-48)

Spelling of first name disputed

A woman complained that the Vital Statistics Branch would not issue her a birth certificate with the correct spelling of her first name on it. She explained that she had lost her birth certificate and applied for a new one. When she received it, she

discovered that the spelling of her first name was incorrect. When she pointed this out to the Vital Statistics Branch, it would not change the spelling of her name. She claimed her name should have a "w" in it because that would reflect the Welsh spelling.

The director of the branch pulled the original birth certificate. It was clear that the spelling of her first name on the original birth certificate was reflected on the birth certificate the branch had just issued. Since there was no margin for error in interpreting the original birth certificate, he suggested that the woman obtain some proof that her family used another spelling for her first name before she reached the age of 12. She agreed to get in touch with her elementary school to determine how her parents spelled her name when they registered her there. (CS85-49)

Coverage for children of non-Canadians

A man complained that the Medical Services Plan had changed its policy and determined that his family was not eligible for coverage because he and his wife were not landed immigrants or Canadian citizens. He accepted that he and his wife would not be covered but felt his two children, who were Canadian citizens, should remain eligible for coverage. The Medical Services Plan disagreed with him saying that, for the purposes of medical coverage, children take on the status of their parents.

We disagreed with this position on the basis that Canadian citizens, regardless of their age, should be eligible for coverage. Later, the Ministry did change its policy so that Canadian children whose parents are not Canadian citizens or landed immigrants are eligible. (CS85-50)

Time limit on claims

A man complained that the Medical Services Plan would not pay his out-of-country claim for medical services because he did not submit the claim within the six-month time limit. This time limit is deemed to start from the date he received the service.

The man explained he was unaware of any time limit and any literature he had about the Medical Services Plan did not inform him about it. He felt this was an unreasonable practice.

After investigating, we agreed with him. The only information which mentions the six-month time limit is the claim form itself. Most people do not request this form prior to any need for it. The Medical Services Plan agreed to review the man's claim and reimburse him for any services covered by the plan. Moreover, at the next printing of the plan's brochure the Ministry will mention the time limit for claims. (CS85-51)

Coverage cancelled but when?

A woman complained that she had received a final billing notice from the Medical Services Plan stating that if she did not pay the premiums, her coverage would be cancelled retroactively. The notice did not give the exact date of cancellation.

Investigation revealed all final billing notices do not give the effective date of cancellation.

The Ministry has recognized this point and will be changing the information on the final billing notices. With its new computer system in place, it will have the capacity to give more specific information relating to the person's individual case. (CS85-52)

No hyphenated surnames yet

A woman complained that the Vital Statistics Branch would not register her baby's surname as a hyphenated name consisting of both parents' surnames. She thought this was unreasonable, particularly when other provinces allow it.

We found that the *Vital Statistics Act* does not enable the director to register a child's surname as a hyphenated name consisting of both parents' surnames. The Act does not allow parents to create new surnames for their children at birth. For a child to have a hyphenated surname, both parents must go through a change of name under the *Name Act*.

The Ministry has made legislative proposals which would change the *Vital Statistics Act* to allow the director to register a child's surname as a hyphenated surname. The Ministry aimed to have changes to the Act in place by mid 1986. However, it will be up to the legislature to choose when and how it changes the *Vital Statistics Act*. Nonetheless, there is the intent to have this province's *Vital Statistics Act* similar to other provinces. (CS85-53)

Common law paternity form

A man complained he had to sign a statutory declaration acknowledging the paternity of his second child before the Vital Statistics Branch would register the child's birth in his name. He explained that he had lived in a common-law relationship with his wife for several years and that two years earlier, at the birth of his first child, he did not need to

swear a statutory declaration. He thought that the new administrative practice was unreasonable and discriminated against people who are not married.

During investigation, we found that the *Vital Statistics Act* requires the mother and father of the child to complete a prescribed form. In this case, the prescribed form is the statutory declaration. Section 3 of the *Vital Statistics Act* deals with the registration of births. When an unmarried woman wants to register the birth of her child, her surname becomes her child's surname and no particulars about the father are required. However, when an unmarried woman and the person acknowledging himself to be the child's father make a request on the prescribed form, the child's birth may be registered with the surname of the father and his particulars will be given as the child's father. Usually, this applies to couples living common-law.

This office found that the statutory declaration was the prescribed form mentioned in the Act and that the form met the intent of the Act. Although the Act does treat common-law parents differently than married parents, we did not find the Vital Statistics Branch's administrative practice was improperly discriminatory. The law makes this distinction and the Branch must set administrative practices to fulfill the requirements of the Act. (CS85-54)

Institutions

Our staff regularly visit a number of institutions operated by the Ministry of Health. Of the 516 cases relating to the Ministry of Health, 219 concerned the Forensic Psychiatric Institute and the Maples, an adolescent care facility. From an initially-rocky start, our relationship with these institutions has developed to the point where the Ombudsman's office can count on the highest degree of cooperation. Staff at such institutions now seem to accept that we share common goals in ensuring the well-being of patients.

Long distance to lawyers

A resident of the Forensic Psychiatric Institute (FPI) complained that he was not allowed to make long distance phone calls to his lawyer unless the charges were reversed.

The complainant had been remanded to FPI for 30 days observation. During this period, it was necessary for him to contact his lawyer in order to prepare for his trial.

The Charter now prescribes that "everyone has the right on arrest or detention to retain and instruct counsel without delay and be informed of that right." The resident must be provided with an on-going opportunity to exercise that right. Requiring that the phone call be collect was an obstacle to the right to retain and instruct counsel.

The executive committee of FPI subsequently agreed to allow direct long distance phone calls to the resident's lawyer. The switchboard operator at the institute will dial the number to confirm the call is to a lawyer's office. This change in policy better ensures residents' access to their lawyers. (CS85-55)

Patient's clothing removed

We received a complaint that the clothing of a patient in FPI had been unnecessarily removed when the patient was placed in seclusion. A patient in seclusion is locked in a private room under close staff supervision. Contact with other patients is not permitted.

In carrying out the investigation, we obtained the progress notes from the patient's file and reviewed the seclusion policy for the institute. We found that the policy did not define situations where clothing could be removed, nor provide for the recording of the reasons for removal or for recording when clothes were returned.

As a result of discussions with senior administrative staff at the institute, new procedures were implemented. These procedures spell out the circumstances for removing clothing, require documentation of the reasons and a record of the time the clothing is returned to the patient. (CS85-56)

Patient consent for information release

A woman complained that a social worker from Riverview Hospital had released confidential information about her to a boarding home operator without obtaining the woman's consent for its release. The social worker had released this information while attempting to find the woman an appropriate placement in the community.

It is clear that there is a need to release personal information in order to find an appropriate placement. In response to our expressed concerns about the process, the Ministry offered to revise the form used to apply for a community placement to include a consent section, giving the hospital the authority to release "relevant information" to potential service providers. In this way, both hospital staff and residents are aware that

only relevant information will be shared. (CS85-57)

Patient sought phone privacy

A man complained that he was unable to have privacy while making telephone calls from the second and third floors of the Forensic Psychiatric Institute. Privacy is an important value which must be respected in institutions. The Canadian Charter of Rights and Freedoms gives a person in detention the right to retain and instruct counsel. A resident exercising that right must be permitted to do so in private. The right to privacy should also extend to any phone call made by a resident.

While there are concerns that residents should not be able to make inappropriate, troublesome phone calls, this concern can be met by the switchboard dialing the phone number to ensure that it is a legitimate call.

We wrote to the Ministry of Health, the institute, and BCBC, suggesting they install plexi-glass phone booths, additional phone lines and a system that prevents the switchboard operator from listening to phone conversations after the call is transferred to the resident. All three agencies agreed to take action to ensure that residents can make private phone calls.(CS85-58)

No group punishment

A resident of the Forensic Psychiatric Institute complained staff acted unfairly when they locked the dormitory doors during the day as punishment for the inappropriate actions of one individual. He argued that an individual's behaviour should be dealt with through an individual treatment plan and not by group punishment.

The issue was discussed with officials of the institution who agreed that dormitory doors should not be locked during the day. It was also agreed that an individual should be handled by individual action and not through actions which affect the whole resident population. Senior staff undertook to ensure that this approach was followed by staff on the ward. (CS85-59)

Help in retrieving belongings

Informal contact with residents of institutions can lead to disclosure of grievances which may seem small in themselves, but which are nonetheless important to patients when already-limited freedoms and mobility are circumscribed by institutional reality.

A patient at Riverview Hospital complained that his belongings were being held in storage at a bus depot and he did not have the money to pay storage costs. As a result of the Ombudsman's office discussing this with a social worker at Riverview, arrangements were made with the Ministry of Human Resources to pay the storage costs owing. A social worker subsequently went with the patient to the bus depot to pick up the belongings. (CS85-60)

Four days in pyjamas

We received complaints from youths at a treatment centre that the practice of placing all new residents under constant supervision for 96 hours was unfair.

During our investigation, we learned that upon admission to the centre, youths were required to remain separate from the other residents for up to 96 hours, and to remain in their pyjamas for this period. We met with the officials of the centre and discussed the admission process. They agreed to implement a new policy that would eliminate, as a general practice, the placing of youths in isolation in their night wear. Only in exceptional circumstances will residents be expected to wear pyjamas or be isolated as part of the admission process. (CS85-61)

Double, triple trouble

A resident of a treatment centre complained that he had received three consequences, or punishments, as the result of one incident. The boy had misbehaved while in the school classroom. He was sent back to his room for 48 hours. He was then suspended from school for one week and charged for the damage he had done to the classroom.

The centre acknowledged that the resident had been severely punished. The difficulty in this situation was that the teachers were not in a position to provide an immediate consequence to the youth for his behaviour.

A new program has been implemented that involves basing a team of child care counsellors in the school. This team assists the teachers in behaviour management and allows problems that occur in the class to be dealt with by the school staff. These changes will prevent similar situations from occurring in the future. (CS85-62)

Privacy in shower

Residents of a treatment centre complained there

were no shower curtains in the boys' washrooms. The youths complained they were being denied their right to privacy.

It is our position that personal privacy is very important to residents living in an institution. A person should have enough privacy to allow him or her to maintain personal dignity. In this case, officials were concerned that shower curtains and shower rods could present a safety risk to residents. However, the director agreed to provide shower facilities that would be safe and that would allow the boys their privacy. (CS85-63)

Ministry of Human Resources

Our workload with the Ministry of Human Resources continues to increase, with 39 per cent more cases in 1985 than in 1984. The numbers are relatively high (an extra 500 complaints) but not surprising, as MHR provides services to people in need in ever increasing numbers. Most of the complaints we receive are about the Ministry's fiscal services; income assistance, health care coverage for its GAIN recipients and daycare subsidies. This category accounts for 73 per cent of our work with the Ministry.

We can only handle this volume of complaints because of the prompt and concerned response we receive from Ministry staff. In the majority of cases, one or two phone calls to the worker dealing with our complainant will resolve the problem, or clarify the need to refer the matter to MHR's own appeal process.

Line social workers, financial assistance workers and supervisors show a real interest in their clients, and a willingness to cooperate with our staff. One of their frustrations, however, has been critical media exposure to some cases. Due to confidentiality provisions of the legislation under which they operate, they are not allowed to respond to or comment on unfair or inaccurate coverage.

We are not alarmed by the rapid rise in complaints against the Ministry. We are concerned, however, at increasing evidence of mistakes, misunderstandings or lack of information to the clients as caseloads rise within the Ministry.

Another concern is the volume of complaints we receive from people who feel caught between the Ministry of Human Resources and B.C Hydro, 84 cases in 1985. Typically, these people have fallen behind in their payments to Hydro and cannot catch up. The Ministry of Human Resources and Hydro have begun work on a protocol to resolve this problem province-wide.

We also receive a large number of calls from parents who are concerned or confused by the Ministry's services to investigate allegations of child abuse and protect the children of the province. Often what these people need is simply more information about the process and their rights.

The table of case closings below contains the unusual number of 67 cases *substantiated: rectified or rectified in part*. Sixty-two of these cases relate to complaints concerning the closure of Tranquille Hospital, an institution in Kamloops for the developmentally handicapped. Since late 1981, the government has had a policy of shifting emphasis in the care of developmentally handicapped. The plan was to move away from care in large institutions to care in the community. As part of that plan, the government announced its decision to close Tranquille. Of the 326 patients, 270 were to be placed in community settings. This was a monumental task for the Ministry of Human Resources and the Ministry of Health and they deserve a great deal of credit for planning and administering a transfer of that magnitude. The remaining 56 residents were to be transferred to Glendale Hospital, an institution similar to Tranquille. It was the transfer of these 56 residents that gave rise to the 62 complaints.

The complaints focused mostly on the factors used by the Ministry of Human Resources and the Ministry of Health to decide which residents should be placed in Glendale and on the question of institutional versus community care.

We did not investigate whether institutional care is preferable to community care as this is a matter of social policy, not administrative fairness. Rather, we investigated the decision-making process of deciding who would continue to receive institutional care and who would be placed in a community setting. We took the position that making decisions for the future care of these people should be perceived to be fair and in their best interest.

As a result of our investigation, we made the following recommendations to the Ministries and to Cabinet:

1. Where a significant decision is being considered which could adversely affect a person in the care of the Ministry of Human Resources, that person, or an individual acting on his or her behalf, should be given notice of the impending decision and be given an opportunity to provide input prior to the decision being made.
2. Where a significant decision is made on behalf of a dependent adult, that full and detailed written information be provided to that person or a person acting on his or her behalf, outlining the reasons for the decision.
3. Where the individual or someone on his or her behalf questions the appropriateness of a significant decision, that decision should be subject to formal review or appeal, affording the opportunity to present new or contrary information to an independent tribunal empowered to hear the appeal and to reverse or uphold the decision.

The Minister of Human Resources responded on behalf of Cabinet. The government accept-

ed our first two recommendations and believed that efforts had been made to meet these goals when the plan to close Tranquille was in process. The government did not accept the third recommendation. Cabinet believed that these decisions were the responsibility of the Ministry of Human Resources and should not be surrendered to any outside source.

Perhaps the most constructive result of our involvement in this issue is that we, like the public in general, are now more aware of the areas which concern handicapped and their families. We have begun a process of dialogue with the Ministries involved and hope to continue to work together to focus and eventually resolve such concerns.

The seven *not rectified* cases noted below relate to two issues. The first issue involves the inability of the income assistance system to take account of child maintenance payments in default. Under existing law, $100 per month of maintenance may be kept without reducing assistance payments. If no maintenance is received for a month, this $100 allowance cannot be carried over to succeeding months when a spouse might make a lump sum payment of maintenance in arrears. MHR is correctly interpreting the law, but the net result seems unjust.

The second issue is that of medical supplies not reimbursable by Pharmacare. In particular, we were concerned that Pharmacare will reimburse for insulin and needles but not for the strips used by diabetics to test their need for insulin. Our concern was over the arbitrary nature of this practice.

Substantiated: rectified or rectified in part	67
Substantiated but not rectified	7
Resolved: corrected during investigation	679
Not substantiated	473
Declined, withdrawn discontinued	594
Total number of cases closed	1820
Number of cases open December 31, 1985	179

Resolved

We received a complaint that the Ministry of Human Resources acted unfairly in returning a 13-year-old girl to the custody of her father. The girl had not been getting along with her father and had asked that she be permitted to remain in a foster home.

Our investigation revealed that, while there were some problems between the girl and her father, the Ministry felt confident the difficulties could be resolved. It was prepared to provide support services such as counselling and child care. As a result of these services and the involvement of the social worker, family members were able to work out their differences and the girl was happy to return home. The case reflects Human Resources policy to attempt, where possible, to have families reunited. (CS85-64)

New visiting arrangements

A mother complained that the Ministry was acting unfairly in altering access arrangements with her children. The original arrangement had allowed her to see her children frequently. She considered the new arrangements unsatisfactory.

The problem in this case was that the complainant's daughter was in one foster home and her son was in another. Originally, supervised visits had alternated between the foster homes and the complainant's home. The Ministry had informed the mother that she could no longer take the children home, but would have to see them individually in their foster homes. The complainant said this made it difficult to spend a reasonable amount of time with her children.

We alerted the Ministry to the complainant's concerns. The Ministry agreed to provide increased child-care supervision services and to arrange for the mother to visit the children at home as well as in the foster home. Ideally, the mother would have preferred to see the children 24 hours a day, but she realized that she had some problems that prevented this and was satisfied with the new visiting arrangements. (CS85-65)

Protecting children paramount

A man complained to our office that the Ministry had apprehended his children unfairly. The complainant felt that the apprehension resulted from a disagreement with a social worker. The complainant added that his family had suffered considerable hardship in the course of establishing that the children were not in any danger by being at home.

We reviewed the Ministry's files and discussed the situation with the complainant and the social worker. We were able to determine that during a previous interview between the complainant and the social worker, the man made statements that led the social worker to believe that the children were in danger. Given the social worker's duty to protect children, we did not think she acted improperly.

We informed the complainant that, while he knew in his heart that he would not harm his children,

the Ministry must make decisions based on professional assessments and investigations.

It is inconceivable for many people to consider harming their children. However, tragic situations have occurred. It is necessary for the Ministry to treat with extreme caution and seriousness any indication that such a tragedy could recur. We cannot fault the Ministry for taking precautions to protect children when it is believed to be necessary. (CS85-66)

To be informed, or not to be

We received a complaint that the Ministry had acted improperly by not advising a mother that the superintendent would be applying for permanent custody of her son.

Our investigator discussed this matter with officials of the Ministry and was informed that the complainant had been served with Notice of Hearing documents and that the social worker had explained the importance of the complainant appearing in court. As well, the mother was informed of her right to appeal a court order granting permanent custody. According to our information, the complainant did not appear in court nor did she file an appeal during the 30-day appeal period. Based on this information, we informed the complainant that the Ministry had acted properly and we were unable to substantiate her complaint. (CS85-67)

Foster child abused

A woman in her 20s who had been a child in care contacted our office. She said that during her teenage years, she was placed in a foster home and was sexually-abused by the foster father. After being subjected to this abuse for an extended period of time, she said she was finally returned to her natural family.

Our investigation discovered the complainant had attempted to bring this to the Ministry's attention on a number of occasions. When she felt that none of the local authorities were prepared to deal with her allegations, she contacted our office. We requested officials of the Ministry conduct a thorough investigation. The Ministry assigned a senior staff member to this task and provided us with his complete report.

We learned from the Ministry's investigation that the foster home was located in a rural area that was almost inaccessible during winter months and that the home did not have a telephone. The Ministry's contact with the home was therefore minimal.

As a result of this investigation, the foster father was charged and sentenced to seven years in prison. The Ministry reviewed and revised its policies, directing social workers to see foster children away from their foster parents and to make regular home visits. In addition, regional managers have been notified of the necessity to monitor remote foster homes.

Our concern, quite apart from what happened to this woman, was that the Ministry failed to act when she complained to its staff three times over a period of five or six years. There are now procedures in place which should prevent repetition of the problem and ensure that such allegations are investigated promptly. (CS85-68)

Long wait demeaning

A woman called a Ministry district office to make an appointment to apply for income assistance. She was told that all intake, except for emergencies, was done on a "first come, first served" basis between 8:30 a.m. and 12 noon. She was warned that no more than 12 people could be seen and that those arriving after this quota had been filled would have to come back the next day.

The woman arrived at 8:45 a.m. the following day and found she was already the twelfth person. A thirteenth was later turned away and told to come back the day after. This process required that the woman wait in a crowded room for two and a half hours. If anyone left, they lost their place and had to come back the following day. She felt that this was a demeaning and unfair procedure and called the Ombudsman's office to complain.

The Ministry explained to us that their procedure was designed to reduce the time between the client's initial contact with the office and the receipt of the first income assistance cheque. However, the Ministry did agree to modify it. Intake will continue to be between 8:30 and 12 noon. If there are more than two clients per worker, meaning a wait of more than 35 minutes, the receptionist will assign appointment times. This will allow clients to choose to wait or return later. Those clients who are late for their appointments will be assigned the next available time. (CS85-69)

Sudden expenditure covered

A woman called us to complain that her income assistance cheque had gone down by $177. This was to cover money MHR had paid to Hydro to cover arrears charged to her. The complainant felt that this was unfair, because other people in similar situations received crisis (extra) help, which did not come off their regular cheques.

When we investigated, we found much of the $177 arrears related to a bill from 10 months before, when the woman lived elsewhere in the province with her now-estranged husband. This meant our complainant was not aware the bill was coming and had not budgeted for it. This, then, was an unexpected or 'crisis' problem. The Ministry agreed, and issued the extra assistance to our complainant.(CS85-71)

Rent money went to car

A single parent with two children who was dependent on income assistance asked for help when confronted simultaneously with a recovery of excess benefits previously paid to him and eviction by his landlord. The client had apparently used two months shelter benefits for other expenses and had consequently fallen behind in his rent.

Inquiries were made with the local district office. The district supervisor agreed to provide a further two months rent. The earlier shelter monies were then to be recaptured. After our office discussed the matter with a regional manager, he agreed to exempt about half of the recapture amount since the original rent money had been used to pay for car insurance. The Ministry felt this was valid, given the poor health of one of the children and the fact that the family had no access to public transportation. (CS85-72)

Cost of home nurse paid

A GAIN for Handicapped client complained that she was unable to go on paying the fees charged by a visiting nurse. The client had recently undergone surgery and had been released early on the understanding her dressings would be changed regularly at home. The woman had already paid $25 from her limited income and owed a further $60 to the nurse.

The district supervisor, contacted by the Ombudsman's Office, agreed to pay the outstanding bill to the nurse and reimburse the client for the amount already paid. (CS85-73)

Unapproved care not funded

A woman complained that the Ministry had refused to subsidize her day-care expenses. She had three children who required in-home care when she was at work and this care was provided by a 15-year-old. The Ministry requires that parents use an approved resource before they will subsidize the day-care expenses. The minimum age required before approval can be considered is 16 years. The Ministry's rationale for this policy seems sound and in keeping with its mandate to protect children. A younger person might not be mature enough to handle a crisis in which the well-being of children is at risk. We found the Ministry acted properly in refusing to subsidize this woman's care expenses while she was employing an unapproved resource. (CS85-74)

Man sank his teeth into this one

As the result of the Ministry's failure to pay a man's rent in November 1984, as it had agreed to do, the hotel in which he lived refused to relinquish his belongings when he was hospitalized due to psychiatric illness. The hotel later disposed of the man's belongings, including his glasses and dentures.

Once the man had recovered from his illness, he required both the glasses and dentures. The glasses were easily replaced by the Ministry's Health Care Services upon receipt of a new prescription. But Dental Services limited clients to one set of dentures every five years. This would be a second set within the five-year period.

Once the Ministry accepted responsibility for the loss of the man's dentures, the Dental Care Plan agreed to waive the five-year period and replace the dentures. (CS85-75)

Son can prepare meals

A single mother with a 14-year old son had arranged for out-patient surgery on her right hand on a Wednesday afternoon. The Ministry provided for three hours of homemaker service per day for Wednesday, Thursday and Friday and for the following week beginning on Monday.

The woman maintained that the Ministry should provide the homemaker service during the weekend also so she would not have to rely on her son to prepare simple meals of soup and sandwiches.

After investigating the complaint, we found that the Ministry had acted properly. Homemaker services are not intended to relieve persons of any function which they can and should assume for themselves or their families. Since the woman's son was free from school on weekends and available to prepare simple meals, this woman did not qualify for homemaker service on the weekends. (CS85-76)

Half pay for full job

During August 1984, a man was one of four mov-

ers to submit estimates to the Ministry to move an income assistance recipient to another part of the province where a confirmed job awaited. This man's bid was the lowest at $1,672.90, and was accepted. But when he presented his bill to the Ministry, he received a cheque for only $690.90, not even enough to meet his fuel expenses.

The Ministry was unable to explain to us how it arrived at the figure of $690.90, but agreed to issue the balance of the mover's invoice. A cheque for $982 was issued. (CS85-77)

Bill paid, power restored

An expectant mother with two children contacted our office complaining that the Ministry had refused to help pay her Hydro bill. She had a bill of $69.24, of which $39.15 was in arrears. Her Hydro service had been disconnected on September 12, 1985. Since her apartment was heated electrically and the nights were getting cool, she was particularly concerned about her five-year-old son who suffered from bronchial asthma.

The Ministry agreed to pay the actual arrears of $39.15, plus the $10 reconnection charge. The complainant agreed to pay the remaining $30.99 at month's end when she received her income assistance cheque. B.C. Hydro reconnected the service. (CS85-78)

Assistance cheque reduced

A man contacted our office complaining that he did not receive sufficient income assistance to adequately provide for his wife and four children. He had been working part-time and had earned $450 in April. Since the Ministry only exempts $100 income, $350 had been deducted from his cheque at the end of May. He had spent the money he had earned on car repairs and gasoline and the family had now run out of food. There was not even any milk or formula for a four-month old baby.

The Ministry agreed to issue a food voucher for $100 to carry the family until their family allowance cheque arrived mid-month. (CS85-79)

Appeal decisions stalled

Some time ago, we identified a number of cases in which the Ministry had failed to implement an Appeal Tribunal's decision, pending a decision on whether or not to pursue the matter through the *Judicial Review Procedure Act*. We recommended that the Ministry implement such Tribunal decisions promptly, regardless of future action.

In response, the Ministry agreed to make payment of benefits immediately on a "without prejudice" basis for all but the most unusual cases involving large sums awarded on a one-time grant basis or those involving unreasonable travel expenses. For such situations, the Ministry assured us that a prompt review of the matter would be undertaken. An operational directive to this effect was issued by the Ministry and circulated to advise the Ministry's staff of this policy. (CS85-80)

Report access denied

An income assistance recipient complained that he had been denied "handicapped" status and the higher rates of income assistance which go with it. He maintained his physician had supported his application on the basis of his physical disability.

The complainant was advised to appeal. However, in making this referral, we became aware of a weakness in the appeal process. The Ministry would not provide the appellant with a copy of his physician's report. Without access to this information, we felt that the appellant's ability to present an adequate case in his defence was severely limited. We therefore recommended that the Ministry, on the request of the appellant, provide a copy of the medical report involved. The Ministry agreed to this.

In looking at the appeal process, we also became increasingly concerned that tribunal members were often unaware of the "rules of natural justice". We felt that the Ministry had a special responsibility to ensure that tribunal members were aware of these rules. The Ministry agreed and is now developing a list for tribunal members to inform them of their responsibilities. (CS85-81)

Federal grant cut from cheque

A woman complained that a $714 natural gas conversion grant from the federal government was going to be deducted from her income assistance of $905. This would leave less than $200 for her three children and her to live on for the current month. She said the social worker had previously told her the grant money would not be deducted.

Our inquiries with Human Resources revealed that the client had spent the money on household repairs and expenses instead of using it to help cover the cost of the conversion, as previously agreed. After further discussion between the client and the social worker, the client agreed to accept recovery at $100 per month, rather than have the money recaptured over a longer period as suggested by our office, or appeal the decision. (CS85-82)

More information needed

An income assistance client classified as unemployable wanted to be approved for GAIN for Handicapped, but was unable to obtain this approval or get a new application going.

Our office made inquiries which revealed that the Ministry was quite willing to process a new application or to update the old one, provided more medical documentation was sent in. The complaint against the Ministry was not found to be substantiated. The client told us she had trouble explaining what was needed to her doctor, so we called him to explain the situation, as well as to clarify GAIN policy and legislation on handicapped status. He agreed to discuss all this with his patient and to send in new information. (CS85-83)

Unscrupulous employer at fault

A woman complained that the Ministry of Human Resources had denied income assistance to her family of six. Her husband had become unemployed in the early fall of 1985, a time when the family was living off their savings. In early December, he secured employment through Canada Employment and worked for approximately four weeks. Unfortunately, his employer was negligent in filling out the appropriate documents for Unemployment Insurance, Canada Pension Plan or Income Tax. On top of all of this, the complainant's husband found that both his paycheques were returned by his bank as NSF. When the complainant and her husband went to the Ministry for assistance, they had not had any income for some time.

The Ministry refused to provide assistance, because it appeared that the complainant's husband had been fired and was therefore ineligible. The Ministry also assumed that there would be some $1,100 in back pay coming soon. In desperation, the complainant called the Ombudsman's Office.

We found that the complainant and her husband had filed a complaint against the husband's previous employer with the Ministry of Labour. It appeared that the employer had a history of hiring employees, paying them with NSF cheques and then dismissing them. Once the Ministry was informed of this, it agreed to issue a full month's Hardship Assistance for a family of six ($1,040), provided the complainant and her husband document the fact that the paycheques were returned NSF. The next day, the complainant's husband brought the NSF cheques and the accompanying bank letter to the district office. An income assistance cheque was issued to the complainant that afternoon. (CS85-84)

When does daycare begin?

A woman who provided licensed family daycare in her home complained that the Ministry was making unreasonable demands on her time. The Ministry required that she meet a child at kindergarten and walk him back to her home.

The Ministry's rationale for this was that, since the care-giver was billing for a full day, her responsibility started first thing in the morning. (The daycare billing system allows for a full day's billing for any time over 4 hours.) The woman argued that her responsibility began when the child was dropped off at her home. Since the child was taken to kindergarten by his mother, the care-giver argued that she did not assume responsibility until that child arrived at her home.

The district supervisor for the local daycare office argued otherwise. The care-giver assumes responsibility when the child arrives at the kindergarten, first thing in the morning, she contended, even if it means bundling up all the other children in her care and walking them all to the kindergarten to pick up the other child.

After some consultation with the Ministry's Family and Children's Services Division, the district supervisor agreed to change the policy. As a result, the Ministry acknowledged that a care-giver assumed responsibility for a child only after that child has arrived at the daycare resource. (CS85-85)

Ministry of Labour

The Ministry of Labour has continued to be courteous and cooperative in its relations with this office. We are able to resolve many of our complaints quickly because of the Ministry's prompt and thorough responses to our inquiries. The Ministry's willingness to review its decisions, practices, policy and legislation when appropriate is commendable and appreciated by this office and the complainants.

Substantiated: rectified after recommendation	4
Substantiated but not rectified	2
Resolved: corrected during investigation	20
Not substantiated	2
Declined, withdrawn discontinued	46
Total number of cases closed	74
Number of cases open December 31, 1985	11

Premiums can be recovered

A man complained to the Employment Standards Branch that his former employer had failed to pay eight months' worth of premiums under the Medical Services Plan on his behalf despite the employer's agreement to make such payments.

When he brought this matter to the attention of the branch, an officer refused to assist him. The officer contended that the payment of the premiums was a condition of employment and not "wages" for the purposes of the *Employment Standards Act*. Our finding was that "wages," defined in the *Employment Standards Act* as amended in 1983, included "money required to be paid for an employee's benefit under a contract of employment to a fund, insurer or other person". When this was brought to the attention of the branch, it was confirmed that it did, indeed, have the authority to require a former employer to pay Medical Services premiums on behalf of our complainant. (CS85-87)

Review process discriminates

On behalf of a former employee claiming severance pay, the Employment Standards Branch issued an Order to Pay against the employer. When the employer sought a review or appeal of the Order, he was shocked to learn that in order to obtain a review, employers have to pay a deposit of $100 or 10% of the amount in the order, whichever is greater. The deposit is only returnable if the employer wins his appeal. Employees do not have to pay a deposit in order to appeal.

The employer complained to our office about the deposit requirement, arguing it was discriminatory and a barrier to the exercise of his legal right to appeal. We looked at the *Employment Standards Act* and found that Section 12 specifically requires an employer who wishes a review of an Order to Pay to deliver the money prior to the review. We confirmed that the required deposit is only refunded if the employer is successful in his review.

We came to the preliminary conclusion that the deposit was, in fact, a deterrent fee, not simply an administrative fee and that it arises from a statutory provision which is oppressive. We consider a precondition such as a deposit to be oppressive when it has the effect of unreasonably overburdening a person in the pursuit of his legal entitlement. In this case, the employer could not afford the fee and was absolutely deterred from pursuit of his legal remedy, a review.

We also came to the preliminary conclusion that the statutory provision, Section 12 of the *Employment Standards Act*, may be improperly discriminatory. A statutory provision is improperly discriminatory where it treats two classes of people differently when it is not reasonably required for the attainment of the overall purpose of the legislative scheme. In this situation, only an employer seeking a review of an order to pay is required to make a deposit.

We presented our Preliminary Report to the Employment Standards Branch director and the Deputy Minister of Labour. After a full investigation of this employer's case, the order to pay was cancelled and, more importantly, we were told in November that our concerns with the legislation were receiving the attention of the Employment Standards Branch and the executive of the Ministry. (CS85-88)

Permit rules discriminating

A man complained that he was unfairly denied an electrical permit. He was building an addition onto his mobile home. The local electrical safety inspector denied the permit because the complainant was not a registered owner, as defined in the Regulations, nor a certified electrical contractor.

A 'registered owner' is defined as: 1) a person listed in the Land Title Office as holding title to land and premises; or 2) a registered purchaser under an Agreement for Sale, or 3) a lessor of a term not

less than 20 years. A registered owner who can provide evidence of sufficient knowledge of electrical work may be granted an electrical permit to do the wiring of his own home.

Our complainant did not fit within any of the definitions of registered owner. The regulations do provide an opportunity for tenants or occupants to receive electrical permits, but only if they first obtain written authorization from their municipal chief electrical inspector. Unfortunately, our complainant did not reside in a municipality which had its own electrical inspection service.

The complainant, who was very knowledgeable in electrical work, seemed to be unfairly prejudiced by the current scheme of the regulations. If a homeowner can apply for a permit, then a mobile homeowner or a strata title owner should also have the opportunity to receive a permit. Similarly, if a tenant or occupant in a large municipality is able to obtain a permit, then a tenant or occupant in a smaller municipality should also be able to. We felt that the regulations needed improving to make them fair to all and consistent with the Charter of Rights' equality provisions.

The Electrical Safety Branch was interested and concerned when this issue was brought to its attention. The director agreed that some changes to the regulations were required. He assured us that all of the regulations would be undergoing a critical review. Meanwhile, our complainant was allowed to apply for a special certificate to enable him to complete his addition on his own. (CS85-89)

Two out of three isn't bad

Following a dispute with his employer, a laid-off worker brought a complaint to the Employment Standards Branch. He sought overtime and severance pay. He was told he would not be eligible for severance pay until 13 consecutive weeks of layoff had elapsed. A certain amount of overtime pay was collected on his behalf. But the worker did not believe this amount to be correct.

The worker said he sought assurance from the industrial relations officer handling his case that there would be no problem with his seeking work in another community. While he was away, his employer issued a recall to work just before the 13-week limit expired. As the worker was not available at the key moment, he forfeited his right to severance pay. He held the officer accountable.

Our investigation found the formula applied to calculate the overtime pay had been incorrect and, in fact, an additional $267.58 was owing. The branch agreed with us and collected this amount on the employee's behalf. The branch also agreed to tell all IROs to counsel employees on layoff status of the requirement that they let the employer know their current address and telephone number.

The branch did not accept our third recommendation which held the branch responsible for the severance pay. Following further legal research on the issue which took into account the branch's objections to our proposal, we realized that we would not be able to sustain this aspect of the worker's complaint. (CS85-90)

Ministry of Lands, Parks and Housing

The downturn in real property values over the last five years was still evident in 1985. This gave rise to a number of complaints against the Ministry of Lands, Parks and Housing. Crown land prices were based on private and commercial market values. Complainants, whose lease purchase agreements were based on previously higher market values, faced economic hardship and sought assistance from the Ombudsman's office.

Responding to our suggestions, the Ministry made changes to its policies to reflect an appreciation for changing conditions and offer flexibility to its clients.

Included in the following statistical summary are case statistics involving the B.C. Housing Management Commission which is under this Ministry's jurisdiction.

Substantiated: rectified after recommendation	3
Substantiated but not rectified	2
Resolved: corrected during investigation	21
Not substantiated	26
Declined, withdrawn discontinued	36
Total number of cases closed	88
Number of cases open December 31, 1985	7

Lease policy changed

A man contacted our office with a complaint concerning the Ministry's leases.

In 1980, the Ministry had amended its Agricultural Lease policy, partly in response to requests from leaseholders. One particular aspect of that policy change was that the time limit to complete developments on the land was reduced to five years from 15 years.

As the 1984 year closed, several leaseholders realized that it would be difficult to impossible to complete their improvements. The five-year period proved too restrictive. The alternative was that the leased land would revert to the Crown.

Our complainant was among the first to face termination of his lease with the inevitable reversion of his land. We suggested to the Ministry that it review the practicality of the policy. The Ministry undertook the review and made a policy change in 1985 to extend the five-year period to 10 years which now, with experience, appears more appropriate. This change affected some 1,000 developing farms. (CS85-93)

Income figure really account number

An elderly couple, tenants of the British Columbia Housing Management Commission, contacted us in consternation. Their income had gone down by $100 since last year, but their rent went up $75. They could not understand this. Rent is set as a percentage of income, and they knew they had been honest and complete in declaring their income. They were concerned, and also scared. They did not want to go to the commission themselves because other tenants had told them tales of unfairness and unequal treatment.

We did not find any evidence to support those rumours. Instead, we found a simple mathematical error. Instead of using income to calculate rent, the commission had previously been charging a percent of the complainants' bank account number. That number had been written on the cheque stubs in a place where it looked like the actual income. The result was the tenants had been undercharged for a year. The commission readily admitted its mistake and did not ask the tenants to make up the underpayment. (CS85-94)

Invasion of privacy?

A tenant group contacted our office on behalf of some housing commission tenants who were part of an annual random audit.

The audit is designed to verify that subsidies are allocated correctly. It canvassed about one-twentieth of the commission's tenants. Tenants are asked to provide secondary verification of their income. In this case, the proof was requested via release of income tax records. Many tenants may not find this a problem, but a few protested to the tenant group over the invasion of their privacy.

We shared the tenants' concern. Income tax records are confidential and may not be required but may be released with the citizen's consent. On the other hand, the commission needs accurate and readily-available data for a dependable audit.

We sought a compromise where the commission could meet its needs without unnecessary invasion of tenants' privacy. The commission will continue to request that tenants whose names appear on the audit release their tax records, but other equivalent income data will be acceptable in unusual circumstances. We also suggested that tenants discuss this with income tax employees. The federal agency is willing to handle partial releases, for instance, withholding personal information such as political contributions or maintenance payments. (CS85-95)

Ministry of Municipal Affairs

The number of complaints received against the Ministry of Municipal Affairs in 1985 has not increased significantly from the previous year. Our main investigation contacts have been with the Office of the Inspector of Municipalities and the Home Owner Grant Administrator and we appreciate the high level of support which we continue to receive from both of these offices.

Substantiated: rectified after recommendation	2
Substantiated but not rectified	-
Resolved: corrected during investigation	5
Not substantiated	8
Declined, withdrawn discontinued	13
Total number of cases closed	28
Number of cases open December 31, 1985	13

Municipal boundary overextended

A property owner on Vancouver Island complained that neither the Ministry of Municipal Affairs nor her local municipality were willing to correct an administrative error which resulted in the inadvertent inclusion of her property within the municipal boundary in 1981.

Both the Ministry and the municipality acknowledged that the subdivision developer who had proposed the extension of the municipal boundary had intended to exclude the complainant's property and, in fact, the complainant had purchased the property on that understanding. Nevertheless, since the boundary had already been officially changed, the Ministry took the position that the complainant's property could only be excluded if the municipality were willing to conduct a referendum and complete the entire boundary revision process as required by the *Municipal Act*.

While the municipality was sympathetic to the complainant's situation, it decided that the referendum procedure would be too costly. Meanwhile, the complainant's property tax account with the municipality continued to fall further into arrears. When she purchased the property, she had only expected to pay the significantly lower taxes which would have been charged by the adjoining regional district.

After many discussions spanning several months, and largely through the efforts of the Inspector of Municipalities, the Ministry finally agreed that the Letters Patent for the municipality could be amended by cabinet order without requiring the municipality to conduct a costly referendum. The Inspector also ensured that the necessary adjustment was made to the complainant's tax account retroactive to the date of the mistaken boundary extension. (CS85-96)

Racially discriminatory sections deleted

In the course of investigating a complaint concerning eligibility to hold office in an improvement district, it came to our attention that the Letters Patent of several improvement districts in the province contained provisions which restricted participation on the basis of race. Specifically, the Letters Patent of at least four districts, all incorporated before 1950, excluded the members of certain racial groups from voting for improvement district trustees or at general meetings. For example, the provision stating the qualification of voters at the first election in the Letters Patent of the Highland Park Waterworks District in the Kamloops area reads "At the first election the persons qualified to vote for Trustees shall be all such persons as are British subjects of the full age of twenty-one years, and are owners (as defined in Section 165 of the said Act) of land within the territorial limits and are not of -------, --------, or other ------- or ------ race." Since the Letters Patent of all improvement districts were not examined (there are over 300 improvement districts in the province), there may have been many more such instances.

The matter of administration, which was technically the subject of our investigation, concerned the fact that the existence of these discriminatory provisions had been known to Ministry staff for some time and yet no apparent steps had been taken to remove them. In our opinion, the failure of the Ministry to act on that knowledge constituted an omission which was not only likely to aggrieve those individuals who were specifically excluded from participation in those particular improvement districts, but was also likely to offend the sensibilities of any person concerned with the elimination of racial discrimination in our society.

Even though it was unlikely that anyone would attempt to invoke the offensive sections of the Letters Patent, given prevailing social values and the certainty that any such attempt would fail against the anti-discrimination provision of the *Human Rights Act (B.C. 1984)* and the Canadian Charter of

Rights, there was no justification for the Ministry's failure to give priority to the removal of these provisions.

In its immediate response to our letter, the Ministry stated that it had indeed been amending offensive sections of Letters Patent from time to time as the need for other amendments had arisen, but that this procedure would take some time. As a result of our suggestion, the Ministry agreed to speed the process. Within three weeks, the Cabinet ordered the deletion of the outdated provisions and all Improvement Districts were advised to file the amendment with their respective Letters Patent. (CS85-97)

Tax law discriminates

We received a complaint from a handicapped home owner who was concerned that he could not use the entire amount of his home owner grant to reduce his payments to his local improvement district for water taxes. The man had recently moved to a rural area from Prince George where he had been able to set off his total grant against the frontage tax.

On investigation, we found that current provincial laws did not allow home owner grants to be applied to reduce improvement district taxes. Consequently, home owners who pay taxes to improvement districts rather than to municipalities are unable to benefit fully from the grant. We were also concerned that the grant was unavailable to those individuals who most needed it, such as senior citizens and handicapped persons.

On the grounds that the present system was improperly discriminatory, we recommended that the Ministry consider amending the *Home Owner Grant Act* and the relevant sections of the *Municipal Act* with a view to permitting home owner grants to be applied to the parcel tax levied by improvement districts.

In response, the Ministry informed us that it was considering rectifying the problem but that legislative changes to several Acts would be required as well as the revision of existing billing procedures of improvement districts.

Since it appears that the Ministry is accepting our recommendation and seeking to change its legislation, we took no further action. (CS85-98)

Ministry of Provincial Secretary and Government Services

This Ministry is composed of several divisions and through them responsible for a wide variety of activities, such as heritage conservation, lottery grants and licensing, provincial archives and museums, recreation and sports, the government services division responsible for the Elections Branch and Queen's Printer, Government Information Services; and Government Personnel Services Division.

There were very few complaints received against this Ministry. As the following summary illustrates, Ministry officials were willing to resolve the issues brought to their attention.

Substantiated: rectified after recommendation	-
Substantiated but not rectified	-
Resolved: corrected during investigation	16
Not substantiated	12
Declined, withdrawn discontinued	9
Total number of cases closed	37
Number of cases open December 31, 1985	3

Residency requirement questioned

A navy veteran returning to Canada after years of service out of the country contacted our office with a complaint about the *Election Act* and the *Municipal Act*. He objected to the requirement in these Acts that an individual reside in Canada for the 12 months immediately preceding the date of his application for registration as a voter.

An officer from this office discussed these residency requirements with the province's Chief Electoral Officer. Residency requirements in British Columbia were consistent with those in five other provinces and territories while the remaining six provinces required only a six-month residency. The government of Canada did not have a timed residency requirement.

According to the Chief Electoral Officer, the reason for this requirement was to ensure that new residents have time to acquaint themselves with the nature of the voting system, the candidates, and the issues before voting. While the requirements appeared reasonable for a new Canadian, the reasoning did not seem cogent in the case of a Canadian citizen returning from abroad. In the case of a returning Canadian, six months would be adequate time to gain knowledge of the candidates and the issues.

This office corresponded with the Deputy Provincial Secretary and the Deputy Minister of Municipal Affairs and suggested that both the *Election Act* and *Municipal Act* be amended so that they no longer require 12-month residency. Both deputies responded favourably to this suggestion and agreed to review the residency requirements of their respective Acts. (CS85-99)

Superannuation Commission

We continue to receive a small number of complaints about the Superannuation Commission and to experience good cooperation from the commission's staff in investigating and resolving those problems.

Did he really live down under?

A former employee of B.C. Hydro moved to Australia. He returned briefly to cash in his pension contributions, and paid withholding tax to Revenue Canada on the proceeds. The Superannuation Commission had issued a residential TR4 slip for this purpose, under which a 30 per cent withholding tax is applied. The complainant, however, was not a resident of Canada at the time of the pension withdrawal and the funds should have been dealt with under the NR4 tax form for non-residents, which would see only 15 per cent withheld. The difference was $2000.

Revenue Canada counselled the complainant to get an NR4 form from the Superannuation Commission but the Commission refused to issue one. We did not have to establish whether or not the Commission had acted correctly, because Revenue Canada remedied this problem internally and processed the rebate.

No further investigation was done, since it appeared this was an isolated problem and not a sign of misunderstanding between the Superannuation Commission and the tax authorities. (CS85-100)

Notice of changes not given

An employee of the B.C. Assessment Authority had worked for three different municipalities before the B.C. Assessment Authority hired him.

When employed by the municipalities, his super-

annuation contributions fell under the *Pension (Municipal) Act*. In 1974, when he became an employee of the authority, his plan was automatically shifted to the *Pension (Public Service) Act*.

Because he had withdrawn his pension contributions twice during breaks in service before 1974, he wished to be able to reinstate these refunds in order to have a higher potential pension. In earlier years, multiple reinstatements were possible under the municipal superannuation plan, but the *Pension (Municipal) Act* was amended in 1974 to allow only one refund reinstatement to any employee during his entire service.

Although both of his refunds had occurred before the legislation was altered, he was not now entitled to more than one reinstatement. Laws do change.

We therefore considered his complaint to be not substantiated, explained our reasons, and thought the matter closed.

Our complainant then raised another quite reasonable source of concern. Unlike most corporate pension plans, the government-operated plans are statutory, and therefore can be changed without prior consultation with the employees affected. Because prior consultation does not occur, the employee felt it was important that announcements be made of planned changes and that those affected be allowed a period of time to make adjustments to their circumstances. In his case, he could have reinstated one or both of his refunded contributions before the once-in-a-lifetime rule came into effect.

The Superannuation Commission had not, in the past, taken the initiative to inform individuals who may be adversely affected by proposed changes. B.C. Hydro does do this, and its pension plan is also statutory. On the basis of the reasonable argument and the B.C. Hydro precedent, we asked the Superannuation Commission if it might change its administrative procedures to allow such notice.

The Superannuation Commissioner responded by saying our comments will be considered when legislative changes take place in the future.(CS85-101)

Ministry of Transportation and Highways

The wide geographic area and high visibility associated with this Ministry's responsibilities contributes to the number of complaints received. New highway development and construction to improve safety brings about property acquisition disputes or complaints about economic loss where commercial enterprises are affected. Supervision, cancellation and disallowance of driving privileges, particularly if they affect employment opportunities, generate a substantial number of requests for help.

An increasing number of property issues are amicably settled due to Ombudsman staff involvement, preventing time-consuming and costly arbitration or expropriation. Similarly, with driving licence issues, an increasing awareness by all parties of the need for a balance between individual needs and the public safety allows for a speedier settlement in many cases. Recognizing its wide and varied responsibilities, the Ministry has demonstrated a cooperative and understanding approach to matters investigated by our office.

Substantiated: rectified after recommendation	4
Substantiated but not rectified	3
Resolved: corrected during investigation	70
Not substantiated	96
Declined, withdrawn discontinued	76
Total number of cases closed	249
Number of cases open December 31, 1985	27

Highway crew dug up water system

A man complained that a highways crew dug up his water system in the fall of 1982 while relocating a road near Okanagan Falls. He sent a photograph showing the exposure of his water collection rings in a newly-excavated ditch through a spring which was located near the old road bed.

The man claimed the work done exposed the water-carrying strata and that he subsequently had very little water in his well. In fact, it went dry during normal use. The complainant also said bacteriological tests showed the water source had become contaminated. He was therefore forced to develop a new water source to supply his property.

He was unable to negotiate a settlement of his damage claim through the insurance and claims office of the Ministry. He then contacted the Ombudsman.

The Ministry had initially taken the position that the damage to the complainant's water system did not result from Ministry activities. But available evidence refuted any other explanation and the complainant's water system had been in good working order prior to the fall of 1982.

The complainant's water system lay within the right-of-way for the relocated road, but he argued that the person from whom he purchased the property had been granted authorization for the installation of a water system within the right-of-way. This was confirmed later from Ministry records, although the authorization was never transferred into the complainant's name. According to Ministry records, the former owner appeared to have an existing authorization.

Moreover, the complainant had a valid water licence issued in his own name. The *Water Act* provides that an owner of land must give six-months notice in writing of any disruption of works authorized under a water licence. In this case, no notice had been given to the complainant and it appeared that if care had been taken in routing the road, no damage would have occurred. Although the Ministry had the authority to require the relocation of a water system within a right-of-way, Ministry policy was to accommodate existing installations wherever possible.

The acting Deputy Ministry responded to our preliminary report by noting the case was extremely unusual in that the water supply was located close to a roadway. However, he acknowledged the Ombudsman's arguments and offered a "without prejudice" settlement of 50 per cent of the cost of a new water system. By now, the complainant had waited almost three years for a settlement of his claim. He accepted the deal and submitted copies of receipts requested by the Ministry.

Apart from the legal requirement of notice under the *Water Act*, this case raised a broader issue. If there was no protection afforded by permits or water licences on Crown land, there would be little point in obtaining them. It appeared inconsistent to issue such authorizations and later claim that they could be ignored or forgotten when construction was carried out on the Crown land where the permits existed. By obtaining authorizations, individuals have a right to at least expect that notice will be provided to them and an opportunity given to minimize any damage. (CS85-102)

Form letter insensitivity

A woman who was struck with multiple sclerosis attempted unsuccessfully to regain her class 2 driver's licence for sentimental reasons, although she agreed that she should no longer be authorized to drive a truck. She subsequently received a notice of prohibition from driving and complained to our office that the notice served on her was inappropriate and unsympathetic to her personal situation. It appeared to be designed for those individuals losing a licence as a result of driving offences.

The complainant was also upset by the notification from the Sheriff's office that instructions had been given to seize her driver's licence card.

Upon review of the notice of prohibition and attached documentation served on the complainant, her objections appeared to be justified. The complainant's illness was not mentioned as a reason for the Superintendent's action and although specific sections of the *Motor Vehicle Act* were cited as authority for the action, the substance and effect of these provisions were not explained.

Contacted by us, the manager of the Driver's Licence Division indicated her sympathy with the concerns raised by the complainant. She agreed to waive the requirement that the complainant surrender her driver's licence and instructed the Sheriff's office to cease its pursuit of her licence card. The manager further advised that new procedures would now be used in medical cases, so that an individual's driver's licence would normally be cancelled instead of a notice of prohibition being sent. Subsequently, a new form letter for use in medical cases was adopted by the Motor Vehicle Department which addressed the issues raised in this complaint.(CS85-103)

We'll cross that bridge when. . .

A member of a horseback riding club complained when he became frustrated trying to find out how members were to get horses across a bridge to the club's stables.

On normal highways, horses can be ridden on the shoulder, but the bridge has no shoulder, only a sidewalk. One police officer told club members they had to get off their horses and walk them across the bridge on the sidewalk. Another officer said that the horses could be ridden across the bridge on the sidewalk. The Ministry wrote a letter to the club members, saying a horse could not be ridden on a highway. The club members took this to mean they had to use the sidewalk to cross the bridge.

Fortunately, Section 44 of the *Highway Act* specifically refers to the problem of horses crossing bridges. It says that horses can be ridden across a bridge as long as the horse is walking. There is no reason to think that Section 44 applies only to sidewalks.

We were able to confirm our understanding of this section with the Ministry and pass along the information to the club members who confirmed the effect of Section 44 with the local police. (CS85-104)

Hard fought paving job

In October 1981, a man reported he had purchased property in a 39-lot subdivision in which the Ministry of Transportation and Highways failed to require the developer to backtop the roads. The complainant purchased the lot based on a commitment in the prospectus that the developer would pave the roads and that a performance bond had been deposited accordingly with the (then) Department of Highways to guarantee the work.

In approving the subdivision, the Ministry required the developer to provide a bond of $13,500. However, despite expressions of good intentions on the part of the developer, the promised blacktopping was not completed, either by the developer or by the Ministry. Since the road would now actually cost more than $60,000, it was clearly not in the developer's financial interests to honour his commitment to complete the paving.

The Ministry acknowledged responsibility for performing the work, but it appeared preferable to the Ministry that the developer carry out the work. Efforts were made to ensure that this be done in the spring of 1981, but after an initially-promising response, it soon became apparent that the company had no inclination to complete the blacktopping.

The Ministry had no leverage to force the developer to do it. No contractual agreement for the work existed between the Ministry and the developer. Its sole insurance against default was the bond, which would have more suitably been in excess of the cost of the work.

We concluded that the Ministry had made a mistake in calculating the appropriate performance bond for the project. The Ministry acknowledged responsibility for carrying out the promised paving in view of the developer's default.

We also sought a commitment that the work would be completed within an acceptable time frame. However, paving for this subdivision, pro-

posed in both 1983/84 and 1984/85 estimates, was cut from both budgets during budget review.

In response to our formal representations, the acting Deputy Minister said he could make no commitment to the project before the estimates were approved since that would be contrary to the *Financial Administration Act*. Our solicitor, however, advised us the Ministry could make the project a high priority within its allocated budget to assure its completion.

In fact, in informing us of the project's deletion from the 1984/85 budget, the acting Deputy Minister told us the approved estimates only covered contracts awarded the previous year and not completed, or special government projects. In effect, monies had been committed the previous year which had not yet been allocated by the Legislative Assembly. This ran contrary to his assertion that such commitments were in violation of the *Financial Administration Act*.

The complainants had now waited almost eight years for the roads to be paved. It appeared budgetary rejection could continue year after year. We therefore submitted a report to Cabinet in July 1984, asking that our recommendation be implemented or that other corrective action be taken. Cabinet agreed and the Ministry advised us that paving of the subdivision would take place during the summer of 1985. The paving was completed and with that, this protracted case was considered closed. (CS85-105)

Unfairness charge unfounded

A complaint was received that the Ministry was unfair when it closed a lane and developed a new access road to the complainant's property.

Plans for the new road started in 1959 when a right-of-way which crossed over the land was purchased. The complainant purchased his property in 1980 without a survey. In 1985, the Ministry determined the road should be developed, but it was soon discovered the complainant's home was not correctly situated on his property, but that it and the septic field encroached onto the Ministry's right-of-way. This finding prompted the complaint against the Ministry.

The complaint of unfairness was found to be without foundation. The Ministry offered the complainant a Permit of Occupation for his home and negotiations will take place so the complainant can relocate the septic field on his own property. (CS85-106)

Boards, Commissions and Crown Corporations

In order to better inform those ministers responsible for boards, commissions and crown corporations, we now report the status of investigations involving their area of responsibility on a monthly basis.

B.C. Assessment Authority

Substantiated: rectified after recommendation	2
Substantiated but not rectified	-
Resolved: corrected during investigation	5
Not substantiated	5
Declined, withdrawn discontinued	15
Total number of cases closed	27
Number of cases open December 31, 1985	2

No tax break for mobile home owner

The owners of a strata-title mobile home park felt their property taxes were too high, since they received municipal services (road surfacing, lighting, water mains, etc) only to the property gate. They sought relief through a lower property assessment which would reflect the fact that the owners were charged a fee for maintenance of their on-site services.

This complaint was considered to be not substantiated. Owners of large lots have similar costs in bringing services from the street front to their homes. Also, the sales contract involved in selling shares of the strata-title property mentions maintenance fees. This on-going cost is theoretically reflected in the original purchase price.(CS85-107)

A difference in definition

A mobile home owner complained about obvious inequities in the assessment system. Mobile homes are liable for assessment only if they are situated in mobile home parks. According to the *Mobile Home Tax Act*, trailers and other recreational vehicles are supposed to be assessed, too, if they remain in a park over 60 consecutive days. In practice, however, it is virtually impossible for the assessment officer to check the parks frequently, and owners of mobile units can easily leave temporarily if they hear he is coming.

The *Mobile Home Act* (not to be confused with the *Mobile Home Tax Act*) requires mobile homes to be registered. Registration means that ownership can be traced and assessed for tax purposes. But this Act defines a mobile home quite narrowly and excludes trailers and other recreational vehicles from the registration requirement.

On the basis of this complaint and some fairly recent cases of the Assessment Appeal Board which found the matter just as confusing, we suggested the Ministry of Finance consider amendments to the legislation to reconcile what is a mobile home and how it should be treated for ownership registration and taxation. (CS85-108)

Which assessment information is available?

Over the past few years, several people have contacted us to complain they have been denied information by the B.C. Assessment Authority they felt they required to question the assessment of their homes. Homes are assessed essentially on the basis of market values. When you wish to check to see if your assessment is fair, the only reasonable approach seems to be to compare it with the types and sizes of other properties in the same area.

Various offices in the 27 B.C. Assessment Areas have interpreted rather widely what information concerning a neighbour's property they may release to another ratepayer. Some offices offer very little. Others feel that fairly full details can be given out. We have had no complaints about excess information on comparable values, but certainly have had complaints about getting little of use.

Because so many problems had surfaced over the same topic, we decided not to pursue the same complaint independently many times over, but rather to focus on the issue directly with the Assessment Commissioner in the head office. The Ombudsman's Office explained the difficulties this difference in judgment causes, and suggested the head office develop and send out to its regions a policy statement as to exactly how much information can be considered non-sensitive and given out publicly. The authority agreed and the area assessors were to meet to discuss the issue in early 1986.(CS85-109)

B.C. Ferry Corporation

A new approach to addressing complaints about the B.C. Ferry Corporation allows for contact at a more senior level within the corporation's administrative structure. The two-fold benefit is that senior personnel learn first-hand when complaints arise and, since they are at the decision-making level, they can take immediate corrective action when warranted.

Substantiated: rectified after recommendation	1
Substantiated but not rectified	-
Resolved: corrected during investigation	3
Not substantiated	1
Declined, withdrawn discontinued	5
Total number of cases closed	10
Number of cases open December 31, 1985	

Motorcycle damage compensated

In the summer of 1983, a motorcyclist travelling to Vancouver was told to park his vehicle in a certain place on the ferry. The bike fell over during the voyage and the complainant's panniers and trunk were damaged. His bike was valuable and equipped with deluxe fittings, and so he tried to claim the repair cost from the ferry corporation. When that failed, he came to the Ombudsman.

Coincidentally, the corporation was in the midst of testing facilities for more secure transport of bikes and so it seemed that our complainant's problem was not likely to recur. That left the question of compensation, which we pursued because of the apparent negligence by a ferry employee who directed the biker to park in a place where potential instability was great.

Finally, we received the corporation's agreement and the complainant received his money, $208. The time spent by both the ferry corporation and this office was inordinate to the amount of money involved. With the corporation's new complaint approach in place, similar problems should be resolved expeditiously for all concerned.(CS85-110)

Corporation goes halfway

A lady complained in 1985 that in 1983, a ferry attendant had directed that she park her van at the front and in the outside lane. As the ferry docked, she entered her vehicle and, with the engine stopped, pulled on the steering wheel to angle the front wheels toward the exit, preparing to drive off without blocking other motorists parked behind her. When she then tried to drive her vehicle, it would not move and a ferry attendant who offered help met with the same results. Her action had apparently disabled both her steering and gear shift. A tow and repair followed. The repair work had to be completely redone a second time.

The lady sought 50 per cent of the initial bill from B.C. Ferries on the grounds that her van should not have been parked in this front outside position. She was prepared to accept 50 per cent responsibility for her own action which she felt contributed to the damage. Her request was initially denied on the grounds that her actions were premature and unnecessary and had she waited, the ferry attendant would have assisted her departure. When approached by an investigator from our office, the B.C. Ferry Corporation reconsidered its position, recognized that the complainant's intention was to assist the traffic flow and reimbursed 50 per cent of the initial bill. (CS85-111)

B.C. Hydro and Power Authority

In 1985, we handled approximately 64 per cent more complaints against B.C. Hydro than in 1984, which, as noted in the 1984 annual report, had been a 33 per cent increase over 1983.

Once again, we are happy to report that B.C. Hydro staff continue to respond promptly to our requests for assistance in resolving well-founded complaints.

Again this year, most complaints related to B.C. Hydro's attempts to collect overdue accounts. A significant proportion of these complaints were initiated by persons receiving income assistance from the Ministry of Human Resources (MHR) who did not have sufficient funds to pay their overdue accounts within the limits required by B.C. Hydro. In fact, in some areas of the province, income assistance workers themselves made a practice of referring cases directly to our office where they believed that we would have more success in negotiating payment arrangements and in avoiding service disconnection. It now appears that Hydro and the Ministry have agreed to a revision of their policies and procedures that will likely facilitate the resolution of more collection complaints without our intervention.

During 1985 we also handled a variety of complaints concerning, for example, Hydro's refusal to pay claims for damage resulting from power surges and black-outs, the utility's denial of compensation for encroachment on private property, or unwarranted charges for a damaged meter. While such complaints arise less frequently than collections matters, they usually require more extensive investigation.

Substantiated: rectified after recommendation	0
Substantiated but not rectified	1
Resolved: corrected during investigation	221
Not substantiated	37
Declined, withdrawn discontinued	106
Total number of cases closed	365
Number of cases open December 31, 1985	29

Help for an income assistance client

The following fact pattern is typical of dozens of complaints resolved during 1985.

A woman telephoned our office to say that she had just received a notice from B.C. Hydro threatening that her power would be cut off unless she paid her overdue account. She was on income assistance, did not have enough funds available to pay and could see no way out of her predicament.

With the assistance of our office, the complainant's MHR worker and B.C. Hydro collections staff, a satisfactory solution was found. Human Resources agreed to pay a portion of the bill immediately and Hydro agreed to accept the remaining arrears in equal instalments from her future income assistance cheques. B.C. Hydro staff also suggested that she consider the equal payment plan which would make it much easier for her to include Hydro payments in her monthly budget.(CS85-112)

Disconnection notification not received

The representative of a northern Indian band complained on behalf of a band member that Hydro had disconnected electrical service because of an outstanding bill of $25 on an old account. The band member denied having received notice of disconnection.

After several discussions with the district Hydro office and the band manager, it became apparent that communication between the two could have been better. Since the band office had the only telephone on the reserve, Hydro made a practice of leaving telephone messages there for band members with overdue accounts. Not all of B.C. Hydro's messages were returned and it appears that at least one of the messages may not have been passed on, specifically the 'disconnection' message left for the aggrieved band member. Furthermore, after reviewing its records, Hydro acknowledged that its last written notice of disconnection was sent to the band member about six months before.

On the basis of these considerations, Hydro agreed to reconnect service and to waive the reconnection charge. The Hydro manager also agreed to visit the band office to discuss ways of improving communication with band members. (CS85-113)

More than two bills involved

Over the past year, we received several complaints that Hydro had attempted to collect outstanding accounts from individuals who were not legally responsible for paying. Such problems usually arose where two or more individuals shared accommodation but only one took responsibility for the Hydro account.

One complainant was threatened with disconnec-

tion for non-payment of service charges incurred from past accounts which had been transferred onto her present account.

Our complainant did admit responsibility for one unpaid account which had been in her name. However, the two other outstanding debts had been incurred in the names of other people. One debt was from her common-law husband's former account and the other debt was that of a former co-tenant of the complainant's present residence.

Following discussions with B.C. Hydro's corporate credit administration department, it was agreed that our complainant could be held responsible only for the account contracted under her name. A wife cannot be held responsible for charges incurred by her husband prior to entering into the common-law or marital relationship. Accordingly, Hydro negotiated a separate payment arrangement with the husband.

Likewise, our complainant could not be held legally responsible for the Hydro debt incurred under the former tenant's name even though she was also a tenant during the period in question and had benefitted from the service. Hydro was obliged to locate the former tenant to continue collection action. (CS85-114)

Separate bills, please

Our complainant was threatened with disconnection unless she paid arrears for an account that had been in her husband's name prior to their separation.

At the time of the separation and the change of the account name to that of our complainant, B.C. Hydro requested that she sign a payment schedule for the amount outstanding on her husband's account. This payment schedule was offered as evidence she accepted responsibility for the debt.

After discussion, B.C. Hydro agreed that the woman should not have been asked to sign the payment schedule and that it did not obligate her to pay it. Hydro's policy is a wife cannot be held responsible for a debt incurred in her husband's name prior to the divorce or separation. It was also confirmed that a woman need not provide formal or legal proof of separation since it is not always available. The onus is on Hydro if doubt exists.(CS85-115)

Refrigerator repair claim paid

A residential customer's refrigerator was damaged as a result of a defective resister in B.C. Hydro's distribution system. The complainant submitted two invoices to Hydro for repair work completed on two separate parts of the refrigerator but Hydro was only willing to pay the invoice for the repair to the defrost timer. The other invoice for a repair to the motor was dated several days after the first invoice and after the occurrence of an electrical storm. Hydro had assumed that the motor was damaged as a result of the storm and not the defective resistor.

After an initial enquiry from our office, Hydro reviewed our complainant's claim file. It was discovered that, while the second invoice was dated after the occurrence of the electrical storm, the repairs had actually been completed a week earlier, prior to the storm. Hydro reimbursed the customer for the entire cost of the repairs and apologized for the error. (CS85-116)

Damage claim properly denied

A homemaker requested reimbursement from Hydro for the replacement of her toaster which had been damaged during the restoration of power following an electrical outage. The woman complained that Hydro refused to pay for the cost of a new toaster as its records did not show that an unusual power surge had taken place.

Upon contacting Hydro, we were told that over 5,000 homes were affected by the power outage and that the woman's complaint was the only one that had been received. While not conclusive, we found this fact to be supportive of Hydro's position. Hydro also informed us that toasters are much more susceptible to minor electrical fluctuations as the wiring tends to become brittle with use. The occurrence of an unusually high power surge is more readily identified by damage to such appliances as stoves, refrigerators and televisions.

Based on this information, we concluded that we could not substantiate the woman's complaint. Rather than being annoyed with our decision, the complainant thanked us in writing for providing her with a clear and thorough explanation of the matter. (CS85-117)

Improper Hearing

Our complainant's problems began several years ago when B.C. Hydro changed the distribution of electrical service in her area to an underground system. Over the years, the woman complained repeatedly to B.C. Hydro that its transformer box blocked the access to her property and made deliveries difficult. More recently, she also complained that the underground wiring was causing a disturbing noise in her home like that of running water.

Our investigation of the transformer box location was relatively straightforward. Both B.C. Hydro and the municipality provided us with detailed sketches and photographs of the complainant's property. Although the transformer extended approximately two feet onto the woman's property, B.C. Hydro did not think that this caused her any inconvenience and could not justify the expense involved in moving it. After studying the photographs, we concurred with B.C. Hydro's position.

With respect to the "disturbing noise", the woman complained that Hydro and the municipality were blaming each other instead of taking responsibility for solving the problem.

Our investigation revealed that both B.C. Hydro and the municipality had tried every conceivable means to locate the source of the reputed noise. It appeared that both parties had been working cooperatively to solve the problem. Hydro had sent crews to the complainant's home on several occasions but no one was able to hear the noise or find anything wrong with the wiring in her house. The neighbours were also contacted but none of them had heard the noise either.

The municipal engineer had checked the sewer system for possible problems but was unable to find any. Maintenance crews also visited the woman's home but the source of the noise remained a mystery.

The Provincial Electrical Inspector's office later became involved as the complainant was concerned about a possible fire hazard due to the alleged water in her electrical system. The woman was even provided a tape recorder so that she could tape the noise when she next heard it. Several members of our office listened to this tape but we were unable to hear anything other than normal household sounds and traffic noise.

Although we felt that the complainant was genuinely experiencing discomfort, we could not substantiate her complaint. Whatever its origin, it was clear that the noise was audible to no one but the complainant. We can only hope that the problem dissipates with time. (CS85-118)

Trespass finally compensated

More than 16 years ago, B.C. Hydro constructed a distribution line through a woman's property without obtaining a right-of-way agreement or paying compensation. A Hydro representative had apparently acknowledged that the right-of-way was in trespass but neglected to respond to the owner's letter of January 1969 requesting a specific amount of compensation. Since then, B.C. Hydro had taken no action to compensate or legalize the encroachment.

In its initial response to our enquiries, B.C. Hydro acknowledged it had no right-of-way agreement for the distribution line. However, the issue of compensation was side-stepped by suggesting that the Ministry of Transportation and Highways was intending to purchase a wider right-of-way through the property which would, in effect, legalize all but one or two of the seven power poles currently on the complainant's property. B.C. Hydro suggested that those remaining could then be moved off the complainant's property.

We responded that the complainant's claim for compensation for 16 years had still not been addressed. We pointed out that, while the complainant was legally entitled to compensation for the occupation of her land, she had neither the opportunity to negotiate a right-of-way agreement nor the benefit of obtaining compensation through expropriation proceedings.

After numerous discussions with representatives of B.C. Hydro and the Ministry of Transportation and Highways, both authorities agreed to compensate the complainant separately. The complainant was pleased with the total amount received and particularly appreciated the representatives of both authorities for taking the necessary time to explain and modify the terms of the agreements to her satisfaction. (CS85-119)

Meter breakage charge withdrawn

The owner of a mobile home complained when B.C. Hydro billed her $78 for damage to her electric meter and then threatened to disconnect her service if she refused to pay. This was the second time within a month that the woman's meter was broken and had to be replaced. On the first occassion, the offender was apprehended and B.C. Hydro covered the cost of meter replacement. However, since the vandal was not caught in the second case, B.C. Hydro asserted the complainant should be charged for the damage because it considered the meter to be under her care and control.

In our investigation, we requested photographs showing the location of the complainant's meter in relation to her mobile home. We noted that the meter was attached to a power pole situated on the boundary of her mobile home pad. In our opinion, the complainant did not appear to have any reasonable means of preventing damage to B.C. Hydro's meter in such an exposed location. We were unable to agree with B.C. Hydro that she should be held responsible for the damage. B.C. Hydro eventually acknowledged the unfairness and removed the charge from the woman's account. (CS85-120)

Insurance Corporation of B.C.

Complaints against the Insurance Corporation of British Columbia were somewhat fewer in 1985 than in previous years. We believe this may be attributable at least in part to ICBC's emphasis on informing its customers more clearly about review procedures and legal avenues. While a number of complaints continue to centre around debts and collections, complaints about the handling of claims accounted for most of our contacts with ICBC.

The corporation has continued to facilitate our investigations by making both files and personnel readily accessible to our staff.

Substantiated: rectified after recommendation	4
Substantiated but not rectified	1
Resolved: corrected during investigation	137
Not substantiated	71
Declined, withdrawn discontinued	211
Total number of cases closed	424
Number of cases open December 31, 1985	83

Retraining costs paid

A woman was involved in a car accident in 1981. She was unable to continue in her regular occupation because of her injuries and therefore required retraining in another field.

In 1982, ICBC offered her a settlement amount which would not provide a reasonable income while she was undergoing several months of retraining. She chose to remain on temporary total disability benefits and financed a less costly retraining program herself. The woman managed to obtain employment in her new field and her weekly disability benefits were discontinued. Several months later she was laid off and was unable to secure further employment. She remained on UIC benefits until they expired.

The complainant contacted ICBC early in 1985 to request monetary assistance while she sought further retraining in a field that held more employment opportunities. ICBC denied her request on the ground that the 2-year limitation period applicable to the payment of accident benefits and other related costs had expired. Her request was also denied on the basis that the state of the economy, rather than her injuries, was responsible for her unemployment. She then complained to us concerning ICBC's denial.

Upon review, we found her complaint to be justified. We felt that ICBC had not provided the complainant with adequate rehabilitation assistance in 1982 as the suggested settlement would not provide her the financial support needed to undergo retraining. We also felt that the woman's unemployed state was a consequence of her injury because the injury had forced her into an alternate line of work that held few employment prospects at that time.

We recommended that ICBC waive the limitation period and pay for the complainant's retraining. Upon reviewing the reasons for our recommendation, ICBC agreed to pay for the cost of her most recent retraining course. (CS85-121)

Wrong time limit on suits implied

We found ICBC's denial of our complainant's hit-and-run claim to be reasonable. However, we found it unreasonable that, in informing him that he could sue the corporation if he was dissatisfied with the decision, the adjuster asked that he initiate legal action within 14 days.

The only limitation on initiating a suit against ICBC is the stipulation in the Regulations to the *Insurance (Motor Vehicle) Act* that such legal action must be commenced within two years of the loss. ICBC agreed that its adjuster had erred in implying that there was anything to compel their customer to take immediate steps to sue. The corporation agreed to ensure that such an error would not be made again. (CS85-122)

Saved by a hair

While trying to avoid hitting a deer, a driver hit the animal a glancing blow. This sent the car out of control. It hit the guywire on a telephone pole and came to rest at an unusual angle. The man was wearing his seat belt and was uninjured, but his car was declared a write-off by ICBC. The deer disappeared into the bush.

Because the complainant carried no collision coverage, it was essential to establish that the accident was caused by the deer and therefore payable under his comprehensive policy. The only evidence was a tiny amount of what the driver said was deer hair. ICBC was not convinced. The hair sample was sent away to an independent testing laboratory. But it was sent by ordinary mail and it did not arrive at the lab for 17 days. Meanwhile, the complainant was forced to delay starting a new job

elsewhere. Without either his car or the money to buy another one, he could not leave home. The sample proved to be deer hair, and the claim was then paid quickly.(CS85-123)

False statement negates claim

Our complainant alleged his home had been broken into and household items as well as a vehicle had been stolen. His claim for the loss of the vehicle was denied by ICBC on the grounds that he had made false statements "with respect to this claim."

The complainant admitted that he had been convicted on criminal charges in connection with his claim to another company under his home owner coverage. One of those charges involved an expensive stereo which he later admitted he had not owned. He felt that the fraudulent claim should have no bearing on his claim for the loss of his vehicle.

In his signed statement to the corporation, the complainant had described his supposed discovery of the loss of his stereo as a prelude to an inspection of the garage and the realization that his vehicle was not there. We found that he had indeed made a false statement, and that, since it was used to support his ICBC claim, it was made "in respect to a claim." We did not substantiate the complaint that ICBC acted unfairly. (CS85-124)

New dental methods okayed

Our complainant was involved in a motor vehicle accident in 1974 which resulted in dental injury. ICBC accepted responsibility for the necessary dental work. Over the years following the accident, our complainant tried to have the necessary repair work done. However, it was determined that he was not a person who could satisfactorily wear dentures. He therefore went for many years without any teeth.

When he approached our office, he informed us of a new dental procedure where a person could have permanent teeth installed by anchoring posts into the gum. At first, the corporation was reticent to accept responsibility for this repair work as it is fairly expensive and the corporation was not familiar with the procedure. It is not a common procedure in Canada and there is only one specialist in Vancouver who can do it. After receiving information regarding the procedure and its reported effectiveness in Sweden where it originated, the corporation agreed to accept our complainant's claim for this dental repair and settled with him accordingly. (CS85-125)

No witnesses to hit-and-run

A complainant said that ICBC was unreasonable in denying him his hit-and-run claim. All three witnesses could only testify to having seen the complainant lying on the ground beside his bicycle, but not to having seen him actually get hit by a car while riding his bicycle.

There were major discrepancies in the witnesses' stories. There was no police report on the incident and the fire department, which did attend at the scene, could only reiterate what the complainant had told them.

ICBC properly informed the complainant of the denial of his claim and directed him to his proper legal remedy, emphasizing the two-year time limit involved. While the complainant failed to exercise this right within the designated time limit, we could not attribute this to any error or oversight on the part of ICBC. The complaint could not be substantiated. (CS85-126)

Slip Slidin' Away

It was generally accepted by all concerned that our complainant's motorcycle would never have crashed had it not hit a patch of oil. The oil had spilled on the roadway only minutes before, when a hose on a forklift truck had sprung a leak.

The driver of the motorcycle was not injured but her bike suffered damages to the tune of some $300. ICBC refused to pay her claim from the insurance coverage on the forklift because it could not establish that the operator or owner had been negligent.

At our request, the corporation reconsidered its position and agreed to pay the claim. (CS85-127)

Person and his company deemed separate

A man complained to us about ICBC's denial of his claim for loss of his stolen vehicle. He was the part owner of a limited company. A former employee of that company was the prime suspect in the theft. The stolen vehicle, however, was owned and insured by the complainant, not the company.

ICBC denied the man's claim on the basis of an exemption clause in the regulations which allows it to deny coverage where the theft of a vehicle was by a person who was an employee of the insured. We pointed out to ICBC that the person they suspected of the theft was not an employee of the insured but rather was an employee of the limited company and therefore the exemption clause should not apply.

ICBC agreed to review the interpretation of the exemption clause. After further research and review, ICBC agreed with us that the distinction between the private property of an individual and the business relationships of that individual's limited company should be regarded as separate and distinct. ICBC decided therefore that the exemption clause would not be applied in situations such as that of the complainant. (CS85-128)

Minor damage not inspected

Remarkably, our complainant's small imported car sustained only a slightly misaligned bumper when it was involved in a collision with a bus. His garage fixed the problem at no cost. He was found liable for the accident.

He was surprised when, some time later, ICBC informed him that repairs totalling almost $200 had been made to the bus, and he was offered the opportunity of paying the claim cost rather than having his premiums rise on the Claim-Rated Scale. He simply did not recall damage of any magnitude being caused to the bus. He was more surprised to discover that an ICBC estimator had not inspected the bus and yet the corporation had accepted the transit company's bill for the repairs.

The corporation explained that, while it investigates the circumstances of all accidents involving the transit company's buses, when a bus sustains minor damage, the company itself is permitted to estimate and repair damage. We accepted ICBC's justification for this practice: the costs involved in taking a bus out of service for ICBC inspection, or having ICBC's staff chase buses around the city might well outstrip the cost of repairs when damage is slight. The corporation has found through spot-checks and in more serious claims that the transit company's own repairs are competently and economically carried out.

However, this complaint illustrated the problems which could arise when no ICBC inspection takes place. The lack of documentation left our complainant with no recourse other than to dispute the liability decision itself.

We discussed this with ICBC and made two suggestions: that replaced parts be kept on hand for inpsection in the event of a dispute and that photographs of damage be taken and kept on file. The corporation discussed the problem with the transit company's claims personnel, and it was agreed that all uninspected damage would be documented by photographs as well as in the written estimate. The keeping of damaged parts was not considered a viable suggestion because of the time and space needed to store and catalogue parts, some of which are large and cumbersome.

We found the agreement between the Metro Transit Operating Company and ICBC quite acceptable, and a good example of what can be accomplished when two public bodies cooperate. We were grateful to our complainant for bringing this question to our attention and for his helpful suggestions on a resolution. Unfortunately, the change came too late to assist him.(CS85-129)

Letter writing needs work

A woman complained to the Ombudsman that an ICBC adjuster had been rude and offensive to her and that ICBC's response to her complaint about him had been vague and patronizing.

On reviewing the correspondence between the complainant and ICBC, we concluded that ICBC's response had, indeed, lacked sensitivity and had not addressed itself to the woman's specific complaints about the adjuster. In fact, ICBC had investigated the complaint and had agreed to assign a different adjuster to the woman's case.

ICBC's response to the complainant lacked important details of the investigation which ICBC had conducted concerning her complaint and instead included generalizations regarding ICBC's high standards which were inappropriate under the circumstances.

We informed ICBC of our criticism of its response and were subsequently advised that ICBC would be reviewing our comments with a view to improving its letter writing techniques in similar situations.(CS85-130)

Let's not get personal

One of the corporation's small claim centres refused to process a claim on the grounds that our complainant owed ICBC money for penalty point premiums.

The claim was paid once we pointed out that the owner of the damaged vehicle was a limited company, and the outstanding premiums were a personal debt owed by one of the company's principal officers. We also had to remind the centre that where the cost of a claim exceeds the amount of a debt, the money owed may be set off against the total cost of the claim, but the claim may not be refused outright. (CS85-131)

Refusal of coverage in error

ICBC had accepted an earlier recommendation of the Ombudsman and clarified the language in the

Autoplan booklet on the rules governing the transfer of plates and insurance. Therefore, when our complainant had failed to follow these provisions, and ICBC subsequently sought to recover the costs of a claim, we were unable to substantiate her complaint that she had been treated unfairly.

We did find, however, that the corporation had later acted incorrectly in refusing to permit the complainant to insure a newly-acquired vehicle by way of transferring coverage from a previous car, citing the existence of the unpaid claim costs as its reason. While the regulations to the *Insurance (Motor Vehicle) Act* do permit ICBC to refuse to issue new coverage when a premium debt is outstanding, this provision does not extend to debts for reimbursement of claim costs.

The matter was resolved quickly, and our complainant was able to transfer coverage. (CS85-132)

No interest applies

Our complainant accepted the inevitable. He was responsible for an accident which occurred on his way to school. Because he had purchased "pleasure only", rather than pleasure and work/school coverage, ICBC billed him for the cost of repairing the damage to the other car.

However, he balked when he received a statement from ICBC which said that interest had been added to the cost of the claim, and more would accrue if he failed to pay promptly.

ICBC is empowered to add interest to premium debts but not to recovery debts. An error in the computer system resulted in the addition of interest to our complainant's statement. This was to be rectified by ICBC. (CS85-133)

Marital status discrimination

A woman suffered whiplash and three broken ribs in an automobile accident. She was a passenger in a car owned and driven by her estranged husband. He failed to yield the right of way at an uncontrolled intersection and was held responsible for the accident.

ICBC denied her claim because she and her husband were still legally married at the time of the accident and regulations prohibited the corporation from paying claims for injuries caused by a spouse. Had her divorce become final before the accident, she would have been able to sue her former husband for the injury. We found this to be improperly discriminatory and unjust. We recommended that the regulation be repealed and that the corporation settle this claim on an ex gratia basis.

ICBC argued that the regulation was necessary to prevent fraudulent claims between spouses. It also believed that repeal of the section would pressure an injured couple to divorce so that a claim could be brought. A section of the *Married Woman's Property Act* prohibited tort actions between married spouses.

In our view, the risk of fraudulent claims and the small increase in premiums ($3 per policy) was a justifiable cost of providing justice to injured spouses. The possibility that repeal of the regulation would lead to unhealthy pressures on a marriage was highly unlikely. Since ICBC did not accept these arguments, we reported our findings and recommendations to the Cabinet.

While the Cabinet was considering this report, the "equality rights" provisions of the *Canadian Charter of Rights and Freedoms* came into force. They include a provision that there shall be no discrimination based on marital status. Provincial legislation was introduced which repealed the section of the *Married Woman's Property Act* which prohibited spousal tort action. As part of the reform, the regulation which governed ICBC was also repealed. Subsequently, the corporation agreed to settle the claim on an ex gratia basis. (CS85-134)

Labour Relations Board

As in past years we received very few complaints against the Labour Relations Board. Two important issues were prominent in our relations with the Board. The Board's problem with delay appears to have worsened since our last Annual Report. The other issue, that of providing adequate reasons, has been the subject of reports and discussions between ourselves and the Board and hopefully will soon cease to be an issue. For the most part, however, the Board acts in a fair and reasonable manner and few of our complaints are substantiated against this authority.

Substantiated: rectified after recommendation	-
Substantiated but not rectified	-
Resolved: corrected during investigation	1
Not substantiated	9
Declined, withdrawn discontinued	4
Total number of cases closed	14
Number of cases open December 31, 1985	-

Still awaiting reasons

The Labour Relations Board has continued to have serious delay problems rendering decisions and reasons in a reasonable amount of time. An example is the case of a union which came to our office complaining that a very important decision had been rendered in an application for certification from a new union. It was an application in the nature of a raid on the bargaining unit which the complainant union represented.

On July 2, 1984, the board rendered its initial decision which was not in the existing union's favour. Subsequently, it submitted an application for reconsideration, hearings were held, and a final decision upholding the original decision was rendered in a short letter on November 5, 1984. However, adequate and appropriate reasons have yet to be provided. The union has requested reasons in numerous letters and phone calls to the board.

This office has discussed the issue of delay in this case with the chairman of the board. The union's access to appeal or to other remedies is being rendered ineffective by the lengthy delay in providing adequate reasons. The board has thus far delayed more than 13 months and has only offered case management difficulties as an explanation for this incredible delay. The union and our office are still awaiting the reasons for the board decision. (CS85-135)

Motor Carrier Commission

Substantiated: rectified after recommendation	-
Substantiated but not rectified	-
Resolved: corrected during investigation	-
Not substantiated	1
Declined, withdrawn discontinued	14
Total number of cases closed	15
Number of cases open December 31, 1985	-

Reasons for licence denial sought

A delivery company president complained that his application to amend his motor carrier licence had been denied. He claimed that no reasons were given for the decision so he did not know what was lacking in his application. The commission readily admitted that in the notice letter of the decision reasons were not included. However, it claimed and we verified that the complainant had been advised of the reasons orally by a commissioner and others associated with the branch.

Nevertheless, we felt that it would be appropriate for us to advocate the provision of adequate reasons in writing as a general practice. Discussions were held at the commission offices. Our approach to the commission was that the provision of adequate and appropriate reasons is an essential ingredient of procedural fairness. The chairman agreed that applicants should understand why their applications have been denied, but he also had administrative concerns. We ultimately came to a reasonable compromise wherein, during an experimental period, a note would be included in decision letters to those applicants unfamiliar with the commission stating that reasons are available upon request. At the time of this writing, the compromise continues and without serious problem. (CS85-136)

Workers' Compensation Board

Although the Workers' Compensation Board, in its 1984 annual report, reported a continued significant decline in its volume of claims, our office has unfortunately not experienced a similar decline in complaints received against the Board.

Complaints handled by our office against the Board have continued to increase from previous years. In 1985, we closed a total of 737 complaints, as compared to 641 in 1984 and 482 in 1983.

Last year's annual report commented on increasing difficulties with the Board. In early 1985, the relationship between our offices deteriorated to the point where the monthly meetings between our senior staff and one of the commissioners to discuss outstanding issues were actually suspended for a number of months. Our relationship has markedly improved more recently from this all-time low. Our meetings have resumed once again and hopefully with their resumption, we will begin to see a return to the good working relationship as reported in 1982 and 1983.

Notwithstanding the signs that our relationship is improving, there is room for more improvement in this area, considering the low number of cases substantiated and rectified and the high number of cases not rectified in 1984 and 1985.

During 1985, a number of reports were submitted to Cabinet and the Legislative Assembly. Special Report No. 12 to the Assembly detailed nine cases on which the Board and this office had not been able to agree. Special Report No. 14 dealt with the Hamilton case which involved a complaint against the WCB and the Ministry of Attorney General. Special Report No. 15 reported on five additional cases in which the Board had not accepted the Ombudsman's recommendations. An additional case was reported to the Cabinet and is still under consideration.

The Board's change of policy on assignments of compensation has resulted in our receiving several complaints on this subject. While awaiting a decision on the results of an appeal, a worker may have to approach Ministry of Human Resources (MHR) for assistance. MHR may require the worker to assign to the Ministry any benefits he or she may receive from the Board. The Board's change in policy in honouring these assignments means that now the Board may deduct a person's pension as well as wage loss benefits. Further, a deduction can now be made for the whole of the amount 'owed' by the claimant to the Ministry, regardless of whether this amount relates to the same period of time for which the compensation benefits were paid. The complaints we have received indicate that the Board, in honouring assignments, sometimes deducts all monies the claimant received from the Ministry, not just for the period of time the claimant received the double payment. We are pursuing this problem by meeting with officials of the Ministry and the Board.

On a more positive note, the Board has instituted a new procedure in dealing with negative decisions affecting workers and employers. This new procedure consists of a manager, on request, meeting with the worker or employer to discuss the complaint and to review the file. In view of the lengthy backlog of appeals before the boards of review, any procedure that will afford a 'second look' at a decision before the next step of appealing can only be of assistance. Our office has found, on the whole, these 'decision reviews' to be helpful and we have had some success in having decisions reversed by this procedure.

In last year's annual report, the former Ombudsman reported that a directive from a senior WCB manager to line staff - "that personal or telephone contact from the Ombudsman or his staff should be dealt with by the manager" - was causing a waste of time on the part of staff and obstructing investigations. Since last year, the situation has improved in that our staff for the most part are able to speak to Board line workers without difficulty.

A trend of which we have become increasingly aware in 1985 is that of the commissioners reconsidering a decision made by a board of review. Section 90(3) of the *Workers Compensation Act* states that: "Where the board of review does not confirm the original decision, that decision will be reconsidered by the Board." Board policy provides that the Board will not implement board of review conclusions which are not legally permissible. It also provides that the Board will not implement a board of review decision where the conclusion is contrary to all the evidence or against the overwhelming weight of the evidence. This latter power has raised a number of concerns which we have brought to the attention of the Minister of Labour.

We would characterize 1985 as a year of changes with respect to our relationship with the Board. Although for part of the year, the communication between our offices was at a bare minimum, the situation has improved and we are hopeful that it will continue to improve in 1986.

To assist us in reviewing cases, we arranged with an occupational health doctor from the Ministry of Health to meet regularly with our staff to discuss medical questions arising from a review of workers' files. This new arrangement has assisted our staff by providing ongoing medical input where needed into the many complex medical issues that may arise in WCB cases.

The WCB has agreed that better follow-up procedures for claim file management are necessary and has set up the following guidelines for file handling and control to address the concerns we brought to their attention:

1. Claims Adjudicators

When a claim file under the control and jurisdiction of a claims adjudicator is referred to another section of the Claims Department or to another department at the Board, the claims adjudicator will follow up the file within three weeks to ensure that appropriate action is being carried out.

2. Disability Awards Officers

Files charged to the Disability Awards Department will generally be the responsibility of the disability awards officer in question. The disability awards officer will manage the claim and ensure that the appropriate follow-up procedures are instituted. The guidelines for the four-week review system currently in effect will be reinforced by the manager of Disability Awards.

3. Field Office

The Manager of Field Operations will examine all claim files referred to his section for investigation which have not been resolved within 90 days to ensure that the investigation is being properly handled. Each situation will be monitored carefully and consideration given to instituting a further review after 60 days if problems have been noted. Where an investigation involves a claim in which wage loss benefits are still being paid, the claims adjudicator will be responsible for ensuring that the claim file is brought forward for payment at the appropriate intervals.

4. Other Departments

Departments that regularly require claims files will be asked to handle them as expeditiously as possible. Where there will be delays, the Claims Department should be notified so that monitoring action can be implemented where warranted.

In other areas, the WCB agreed to the following changes in response to Ombudsman involvement in complaints:

1. The Board agreed to retain for an indefinite period tape recordings of statements taken by Board staff. (See CS85-144)
2. The Board has included in its training notes a warning to its employees that it does not have the authority to order the reinstatement of a worker by an employer who has violated the *Workers Compensation Act*. (See CS85-145)
3. The Ministry of Labour has agreed to consider the next time the legislation is reviewed our recommendation that the Act be amended to make it an offence for an employer to attempt to discourage a worker from obtaining compensation. (See CS85-145)
4. The Board sent a reminder to its adjudicators that they should use discretion and send separate decision letters to different parties when sensitive information is contained in a decision. (See CS85-146)
5. The Board agreed to revise its letters accompanying lump sum pension payments so that workers are given a comprehensive explanation that acceptance of the cheque does not legally terminate the claim. (See CS85-141)
6. The Board emphasized to its staff in a training session the absolute necessity to deal with boards of review decisions without any delay whatsoever. (See CS85-138)

Substantiated: rectified after recommendation	12
Substantiated but not rectified	5
Resolved: corrected during investigation	133
Not substantiated	77
Declined, withdrawn discontinued	510
Total number of cases closed	737
Number of cases open December 31, 1985	320

Unreasonable delay in implementation

The claim of a young woman in the Prince George area was an example of what can go wrong in the compensation system. She injured her knee in 1977. In 1980, she was experiencing pain and consulted a specialist, who performed exploratory surgery and diagnosed arthritis. In 1980, the adjudicator denied a reopening of her claim on the basis that the arthritis was not a work-related problem. In November, 1980, she appealed that decision to a board of review. One year later, she received a favourable decision from the board of review. However, despite requests from her lawyer, the adjudicator did not implement the board of review decision. In January, 1984, she complained to us.

Our previous annual report (CS84-249) described

this case and the commissioners' response to our investigation. They agreed that there had been unreasonable delay in the implementation of the board of review decision and circulated a training note to claims staff reminding them that such decisions were to be implemented quickly.

Unfortunately, the worker's problems with the WCB did not end there. Her file was returned to the same adjudicator who then demanded unnecessary earnings information and requested that she see a specialist for an opinion. Further delay occurred because she appealed a minor unrelated decision to the boards of review, and the WCB initially felt that it could not complete the pension assessment while her file was at the board of review.

Because of these delays, the worker was not assessed for a pension until August 1985, despite our recommendation in August 1984 that she be assessed as soon as possible. In the meantime, a new adjudicator decided that the major portion of the arthritic knee condition was not related to her injury, contradicting the specialist's report.

Finally, managers at the WCB intervened to reverse the adjudicator's decision and to complete the pension assessment. The worker is now awaiting assistance from the rehabilitation department for a retraining program. (CS85-138)

New evidence failed to reopen case

A woman complained that the Workers' Compensation Board refused to re-open her claim for continuing pain in her hip and leg. She had been injured twice in 1981 and then again in 1982. In 1983, an orthopedic surgeon examined the complainant and recommended a lumbar myelogram in order to confirm his diagnosis of a herniated lumbosacral disc. The woman's attending physician submitted a report to the Board stating that, in his view, her three work accidents had aggravated her pre-existing osteoarthritic condition. After considering the new medical reports, the Board claims adjudicator advised the woman that the refusal to reopen her claim would not be reconsidered.

Where there is significant new medical evidence submitted to the Board, a decision not to reopen a claim on the basis of this evidence is appealable to the boards of review or to a medical review panel. In this case, no right of appeal was given. We therefore proposed that the medical reports be reconsidered and that, if the Board still felt that a reopening was not warranted, the worker be allowed to appeal the decision.

The commissioners have now agreed to consider whether or not the claims adjudicator's decision should be changed, and, if their decision is not favourable to the complainant, to provide her with an opportunity to appeal to a medical review panel. (CS85-139)

A matter of interest

In 1963, a worker injured his back while working as a deck hand on a tugboat. During the same accident, he also received a traction-type of injury to his upper back resulting in developing paralysis in his arms. The WCB compensated him for his back injury but refused to recognize the paralysis. By 1973, the paralysis had progressed to the point that he was unable to continue working at any job. He launched several appeals of the Board's refusal to fully compensate him. Finally, in February 1983, the board of review found that the paralysis was caused by his accident and decided that the WCB should do a disability assessment. He was found to be 100 per cent disabled since 1967. In July 1983, his retroactive pension plus interest entitlement was calculated to be approximately $190,000.

Between the time of the board of review's decision and the calculation of the complainant's retroactive pension award, the WCB changed its interest calculation policy. Prior to May 1983, the policy in effect was that interest would be calculated on the entire amount awarded at the rate of interest that was paid in the preceding calendar year. After May 1983, the policy was that interest was calculated for each separate year at the interest rate paid in each preceding calendar year. In all cases, the interest rate the Board paid in any given year was equal to the rate of return it received on its investments. Under the old policy, the Board was paying more interest than it had received on its investments. As a result of the change in policy, the complainant was entitled to approximately $60,000 less interest than he would have received under the old policy.

Our office concluded that there had been unnecessary delays in processing the complainant's pension award, but was unable to conclude that had these delays not occurred, the calculation would have been made before the policy change. We also found that there was no evidence that the delays were intended to deprive the complainant of interest. However, we did conclude that there was a lack of adequate documentation concerning the reasons for the steps taken after the board of review decision. This lack of adequate documentation left the WCB open to credible accusations that it deliberately delayed in order to deprive the complainant of interest.

We were unable to substantiate this complaint, primarily because we felt the change in interest calculation policy was a reasonable one. All changes in policy must have an implementation date. It is inevitable that someone will be affected by an arbitrary cut-off day when a policy is changed. In this case, it was our complainant. (CS85-140)

Lump sum does not close claim

We receive a number of calls from workers who receive a lump sum pension payment from the WCB. They worry that acceptance of the cash award means that they will not be entitled to further benefits or to a right of appeal regarding the amount of the award. After one such complaint, we asked the WCB to include a more comprehensive explanation in all letters accompanying lump sum payments, emphasizing that acceptance of the cheque does not legally terminate the claim. The Board is now revising its letters to inform workers of their rights in such cases. (CS85-141)

New evidence for pension

A worker suffered a back injury at work in 1958 and in 1969 was awarded a pension of 10 per cent. The pension was based on his average earnings at the time of his 1958 work injury.

However, at the time of the Board's calculations, it only had available the worker's earnings for the eight months prior to his work injury. The worker was able to obtain evidence of his earnings for the two additional months he had worked in the year prior to his injury. We presented this new evidence to the Board and proposed that it recalculate the worker's pension benefits based on this new evidence.

The commissioners agreed with our suggestion. The worker's pension was recalculated based on this new evidence. As a result, the worker received a retroactive increase to his pension of $20,963.72 including interest. As well, his ongoing pension was increased by $135.71 per month. (CS85-142)

How many days in a week?

A worker complained to us regarding the amount of his permanent disability pension. In determining the amount of a worker's pension, two factors are crucial: the worker's average earnings prior to his injury and the worker's percentage of disability. In this case, the disability awards officer, in calculating the worker's average earnings, divided the total earnings over an 18-month period by the number of days in that period. He then multiplied this figure by the number of days worked per week in order to obtain the worker's weekly earnings.

We pointed out that the disability awards officer erred in dividing by the total number of days in 18 months as there was no evidence to indicate that the worker had worked seven-day weeks over this 18 month period. Rather, he had worked six-day weeks. The revised formula would be to divide the total earnings for 18 months by the number of working days in this time period and then multiply this figure by the number of days worked per week.

We therefore concluded that the disability awards officer considered an irrelevant factor in calculating the worker's pension allowance. The commissioners agreed with us that the disability awards officer made an error and agreed to correct it. As a result, the worker's pension benefits were recalculated retroactive to 1979. The worker received an additional payment of $15,387.10, including interest. As well, the worker's pension was increased by almost $100 per month. (CS85-143)

Interview tapes to be kept

The WCB instituted a new policy that tape recordings of statements taken by Board staff would no longer require stenographic transcription. Instead, the Board officer taking the statement was required to prepare a file memorandum outlining the relevant information obtained at the interview. In a situation where a claimant did not appeal the decision of the Board, the tape would be destroyed after three or four years.

The Office of the Ombudsman was concerned about the possibility that the claimant may not appeal but may instead ask for a reopening or reconsideration some years later. If his request was denied and he appealed, he would view his file for the first time since the interview. At that time, if he disagreed with any part of the file memo concerning his taped statement, the tape, which would have resolved the conflict, would have been destroyed.

These concerns were discussed with the Board, which agreed that it was possible that there may be a dispute about information on the tape. It therefore decided to retain these tapes indefinitely. (CS85-144)

Employee fired for making claim

A worker complained to us that he had been advised by a WCB staff member that an employer

who fired an employee for making a claim could be forced to reinstate that employee. Relying on this advice, the worker claimed and received wage loss benefits and was subsequently dismissed by his employer.

Unfortunately for the worker, the Board employee had erred as the *Workers Compensation Act* does not make it an offence for an employer to discourage an employee from claiming compensation. Rather, the offence section applies only to attempts to discourage a worker from reporting an injury. After investigating this worker's complaint, we recommended that the Board seek an amendment to the *Workers Compensation Act* which would make it an offence for an employer to attempt to discourage a worker from obtaining compensation. In response to a recommendation from this office, the commissioners advised that our suggestions for amendments to the Act should be addressed to the Minister of Labour. We subsequently made the recommendation for an amendment, in June 1985 to the Minister of Labour.

We have now been advised that our recommendation for an amendment to the Act will be considered along with other proposed amendments the next time the legislation is reviewed. (CS85-145)

Letters told little too much

A young man complained that the WCB released copies of a letter commenting on his drug intake to several pharmacies and his former employer. While we do not dispute that, in some cases, the Board may be obliged to terminate prescription drugs if a dependence problem is indicated, we believe that considerable care should be exercised in sending such letters of notification to third parties.

As a result of our proposal regarding these procedures, the adjudicator wrote to the worker stating that a brief form letter would be sent to concerned parties if a similar situation arose in his case in the future.

In addition, the commissioners of the WCB sent a reminder to all adjudicators that they should use discretion in such cases and send separate decision letters to different parties when sensitive information is contained in the decision.(CS85-146)

Missed clinic meant benefit loss

A woman complained that her wage loss benefits were terminated because she refused to attend the Board's rehabilitation clinic for physiotherapy treatment. She stated that she had never refused to go.

The complainant lived in Prince George with her young teenage children. Her husband had been transferred to Chilliwack several months earlier and she and the children were not going to be moving there until the end of the school term. She was therefore effectively a single-parent during this period.

She felt she could not go to the clinic at the time of the request for several reasons. The Board was unable to tell her how long she would have to be in Richmond for the treatment. It was prepared to provide a homemaker for the children, but the homemaker would not take care of many things such as paying the bills, doing the laundry or the housework or buying groceries. She was reluctant to leave the children in these circumstances. She asked if she could get the necessary treatment in Prince George. During these conversations, Board staff only talked to the complainant over the telephone and did not meet with her personally. We concluded that the Board was negligent in its duty to investigate thoroughly adequate alternatives before 'suspending' a person's benefits.

The Board has the power to reduce or suspend benefits where a worker refuses to submit to medical treatment which, in its opinion, based on expert medical advice, is reasonably essential to promote her recovery. In our view, there was no clear medical opinion that the complainant could best receive the treatment at the Board's clinic. We felt there was insufficient evidence that the Board itself considered the treatment reasonably essential to her recovery. We also considered that, given her personal circumstances, the complainant really did not have a choice to make. In the circumstances, her progress at the clinic may have been hampered by her pre-occupation with her family.

After the complainant moved to the Lower Mainland, she contacted the Board office in Chilliwack, indicating her willingness to go to the clinic. Her file had not yet arrived. She was advised that she would be contacted when it did. There is no record of this telephone call on the complainant's file. She made one further effort to go to the clinic the following year but was unable to do so because of a non-compensable health problem. The complainant's benefits were never reinstated.

We concluded that the Board was unjust when it 'suspended' the complainant's benefits by misapplying its policy. The suspension actually became a termination of benefits. We recommended that the Board pay wage loss benefits equal to an estimate (based on medical opinion) of the length of time it would have taken for the complainant's

condition to stabilize had she attended the clinic when first told to do so.

The Board disagreed with our analysis but, for reasons of its own, agreed to our recommendation. The complainant has been awarded seven weeks of wage loss benefits.(CS85-147)

An exploding bottle

A worker received a scleral laceration to his right eye when a 1.5 litre soft drink bottle exploded. He subsequently underwent two operations but nevertheless was left with what amounted to an industrially-blind eye.

Even with lenses, the worker did not have perfect vision and he continued to experience problems such as loss of depth perception and focus. The accident also altered his appearance to some extent - hair would not grow where his eyebrow had been stitched. During the healing process, his routine was upset by the need for meticulous self-care of his injury and he underwent episodes of severe pain.

Changes resulted in his lifestyle. He had been a top flight lacrosse player but could no longer engage in that level of competition. He was not able to continue the sport of rifle shooting. He faced restrictions on his future vocational opportunities. Henceforth, it was necessary that he always wear corrective lenses.

The Board paid the worker wage loss and a job search allowance while he was off work. But, because his vision was correctable with eye glasses to something approximating normal vision, the Board accepted no further obligation to him than a small pension for a photophobic condition which now existed. The Ombudsman did convince the Board to extend this pension for a period of time which seemed to have been initially overlooked in its calculations.

We were concerned that the Board had not considered taking legal action on the worker's behalf against the manufacturer of the bottle which exploded and damaged his right eye. We asked the question, 'Did the failure to take legal action have any impact on the compensation which the worker might have received?'

A Board official suggested that no one at the Board had considered legal action on this worker's behalf because no one realized that such an action would even be possible. The crucial question to be considered when contemplating such an action would be the place of manufacture of the exploding bottle. And, had it been established that the manufacturer was located in B.C., the worker would probably not have been able to collect damages because the manufacturer would also be an employer, and under the *Workers Compensation Act*, a B.C. employer normally cannot be sued by a B.C. worker. However, there was a 50-50 chance that the manufacturer was located in the province of Alberta. Unfortunately, this could not be verified, as no one had bothered to retain the remnants of the broken bottle or note the case lot from which it had come. By the time we were asked to investigate, it was impossible to obtain that information.

Had the worker been able to sue the manufacturer, he would have been awarded damages for the loss of vision he suffered and the consequences of such loss to his day-to-day living. There are a number of cases on record of consumers successfully suing the manufacturer of the 1.5 litre bottles, which were eventually banned under the *Hazardous Products Act*. It was this type of bottle which caused the worker's eye injury. In light of the awards made in similar circumstances involving consumers, we believed that if an action had been undertaken against the manufacturer, the worker had a good chance to collect damages.

Under the *Workers Compensation Act*, where a worker is injured by a worker or employer not registered under the Act, a worker may choose to claim compensation, or sue the third party (non-employer). If he claims compensation, he gives up his right to sue the third party. This worker was not informed of the option to sue the manufacturer himself and was dependent on the Board to either inform him or sue on his behalf.

We considered the Board negligent in failing to determine if an action on behalf of the worker existed against the manufacturer. We suggested the Board should compensate the worker for this loss of his possible cause of action. The Board did not accept this recommendation. (CS85-148)

Racquetball okay?

While lifting a case of soft drinks at the hotel where he worked, a worker felt pain in the middle of his back. He reported this injury to his employer and the next day, his physician diagnosed the injury as one of acute back strain and estimated that the worker would be off work for two weeks. A specialist to whom the worker was referred found that he had a pre-existing back condition which would probably account for the intermittent episodes of back pain following heavy work. Because of this, the claim was accepted by the Board on a limited liability basis.

Subsequently, it was discovered that the worker had continued to play racquetball following his in-

jury. On account of this, his employer fired him. The worker had never denied doing so, but claimed that it was good physiotherapy for his back. Upon learning of this fact, the Board re-adjudicated the claim and disallowed it. The board of review accepted the worker's evidence that he had sustained an injury at work which had resulted in an aggravation of a pre-existing back condition. However, in light of his post-injury activity at the racquetball courts, the board of review decided the injury was not disabling and disallowed the claim because the worker persisted in activity which might imperil or retard recovery.

Although at first glance, it would not seem reasonable that a person could sustain a back injury and continue to play racquetball, our investigator discussed it with sports medicine specialists from two B.C. universities and was told it was possible if one was careful. Working at one's job with a back injury would depend on the type of work.

We then obtained a medical legal opinion from a specialist who examined the complainant. He concluded it was possible for the worker to sustain his injury and be disabled from doing his type of work yet, at the same time, play racquetball. In his report, the specialist said, "as this (injury) can comprise a very localized region, this would not have to hamper movement in the rest of the spine and could therefore allow for continuation of sports activity such as racquetball."

Presented in February 1985 with this new evidence, the Board responded that it was not applicable to this particular case and that it would not reconsider it. (CS85-149)

Little things mean a lot

A part-time nursing aide strained her back while lifting a patient. Initially, she was placed on a program of conservative treatment in the form of pain killers and physiotherapy. When her pain continued, a specialist recommended that a myelogram be performed. The Board concurred but the woman was suspicious of the procedure and refused to undergo it. The Board therefore terminated her compensation.

The adjudicator cited Section 57 (2)(b) of the Act regarding refusal to submit to medical or surgical treatment. There were two medical opinions that the worker should have a myelogram, but the worker believed the procedure would be too painful.

We could not find fault with the Board's decision in this case. However, the letter informing the worker her compensation was terminated was sent 16 days after the actual termination. The adjudicator restored the benefits for this period following discussions with our office. (CS85-150)

A light at the end of the tunnel

In June 1976, a worker received 440 volts from some faulty wires on an electrical panel. The shock resulted in some minor physical problems but within two months, the worker was found to be suffering from post-traumatic depression. He was twice hospitalized for this condition and since that time has complained of a lack of energy and a feeling of being withdrawn. He has worked only sporadically since the day of the accident.

The board refused to accept responsibility for his ongoing condition - largely on the basis of reports from a psychiatrist and a Board neurologist, who found this worker's problems related to his personality, not the accident. The shock may have aggravated his mental state but the effect should have long since dissipated.

Literature on the psychological effects of dealing with electrical shock is sparse. What literature there is indicates profound changes can occur and testimony from persons in contact with this worker indicated the accident had had a detrimental effect on his work habits. The Board was not moved by this testimony.

The psychiatrist who had given the original assessment in this case, however, changed his assessment after a later interview and suggested the worker's condition was due, in large part, to the 1976 shock. The commissioners undertook to review the case and it is currently before the Board.(CS85-151)

Back to the back problem

A worker complained that the board had refused to re-open his 1981 claim for an injury to his lower back. In addition to reviewing the worker's claim file, we obtained opinions from both the worker's family doctor and his surgeon concerning the relationship between his 1981 work injury and subsequent surgery to his back in 1982. One of the doctors felt the 1982 surgery was related to the original work injury but the other attributed the surgery to a pre-existing condition and stated the minor injury would have been unlikely to lead to surgery.

The Board's medical advisor agreed with the second doctor's opinion. As it appeared there was sufficient independent medical evidence to support the Board's conclusion, we did not make any recommendation. (CS85-152)

Pejorative comments

Injured workers and their employers have been allowed access to their claims files since 1980. Many workers have found information there that is untrue, prejudicial, or written in a sarcastic or demeaning way. Some of the information may be relevant, some is not. Some of it is written by known sources, some by anonymous sources, some by staff of the Board and its appeal bodies and some by outside consultants.

Workers are concerned such comments or information can give a prejudicial tone to their claims and are concerned employers who receive disclosure may circulate such information, thereby affecting their reputations.

When either workers, their representatives or our office have contacted the commissioners of the Board to have objectionable material removed, they have refused to do so. In certain cases, the commissioners have apologized or have offered to allow workers and our office to place written rebuttals on their files. The commissioners have refused to annotate on offending documents to note the incorrectness or irrelevance of the comment, or to cross-reference our reports about them, even where an apology has been made. Their position is that the file constitutes the legal record of the claim and cannot be tampered with in any way. Following are some examples of material on file:

1. On one complainant's file, there were comments about her being intoxicated in a public place and being involved in a previous police complaint. The Board has apologized but the comments remain on her file.
2. On two complainants' files, there are comments suspecting them of abusing drugs and, regarding one of them, of trafficking in drugs. Again, the Board has apologized but has refused to remove the comments from the claims files.

In the past, we have recommended that the Board take steps to increase the awareness among its employees and consultants of the need to use only objective and non-pejorative language. The Board has done this and the comments by its employees and consultants have decreased but have not disappeared. The Board's Policy Review Committee has recently decided that where the Board agrees that comments on a claim file are indeed irrelevant and pejorative, those comments will be referred to the appropriate director in the Compensation Services and Medical Services Division to deal with the matter as he considers necessary. His consideration will include a determination of what, if any, disciplinary action should be taken and when, if at all, changes should be made in the training programs.

Our concern remains the presence of these untrue, prejudicial and demeaning comments on claimants' files even when an apology has been made. We have made several recommendations to the Board on this issue, one of which has been accepted as mentioned above. The Board refused to accept our recommendation that it provide for the deletion or alteration of file entries when pejorative comments have been recorded, or take appropriate steps to ensure that such comments cannot influence future decisions on claims. In addition to the 'legal record' argument, the Board claimed it would need a special procedure to consider requests for deletion including a method of appeal to resolve disputes. It also said there would be difficulties in actually deleting information if only part of a document were affected.

The issue remains unresolved, however, we intend to continue further discussions with the Board to settle the matter. (CS85-154)

Boards of Review

Last year, it was reported that the administrative chairman of the boards of review had challenged the Ombudsman's authority to investigate decisions made or actions taken by the boards of review. The matter was decided by the Supreme Court of B.C. Justice Hinds, in his Reasons for Judgment, concluded that boards of review are an 'authority' within the meaning of S.1 of the Ombudsman Act and that they should not be characterized as 'courts.' He concluded, therefore, that the Ombudsman had jurisdiction to investigate boards of review.

Bill 61, *Workers Compensation Amendment Act 1985*, has been enacted and awaits proclamation. It provides for the establishment of a Workers' Compensation Review Board to replace the boards of review in hearing appeals from decisions of the Workers' Compensation Board. It is hoped that, once the legislation is proclaimed, more staff will be hired to deal with the ever-present backlog of appeals. In the meantime, we were pleased to see that three new chairmen were recently appointed to the boards of review.

Since the court judgment and after recent changes, we have not had many complaints, other than those of delay. Although our working relationship with the boards has improved, we still remain concerned about the delays.

Substantiated: rectified after recommendation	2
Substantiated but not rectified	2
Resolved: corrected during investigation	11
Not substantiated	5
Declined, withdrawn discontinued	36
Total number of cases closed	56
Number of cases open December 31, 1985	14

Hearing procedures spark complaint

A worker complained about the conduct of his hearing before a board of review. He brought a number of concerns to our attention.

He complained that the hearing started one and a half hours late and during most of this time, he waited in the hallway of the hotel. He said he was advised by a board of review member to remain in the hallway or it would be concluded that he had abandoned his case.

Once in the hearing room, the complainant told us that the appellant's side of the room was so dark that he had difficulty identifying documents. A lamp was requested and subsequently brought in.

The complainant also said only board of review members had prior knowledge of the hearing procedures. He complained that his union representative was not permitted to read from prepared notes and, as a consequence, was unable to assist in the presentation of his appeal. He was also upset over the unexpected requirement to speak on his own behalf.

We reviewed a copy of the transcript of the hearing, spoke with the chairman of the panel and the worker's union representative.

We found that it is the practice to schedule five hearings per day when board members are travelling. If one hearing goes over the allotted time, delays result. The complainant's hearing was the last of the day.

We found that after a complaint by the union rep, the two were permitted to sit in the lobby rather than in the hallway while awaiting their hearing. We were advised that chairs are normally provided in the hallway but if the wait is to be long, people are advised they may go for coffee or wait in the lobby and check back each half hour. If the delay is expected to be less than 15 minutes, people are asked to stay in the hallway.

The panel chairman advised us that a pamphlet on meeting with boards of review is sent to claimants when they are notified of the hearing. The pamphlet outlines hearing procedures. The chairman advised us this pamphlet would have been sent to the complainant.

We also found that the lamp requested during the hearing provided sufficient light and that the lighting situation had no adverse effect on the conduct of the hearing.

The fact that the union representative was not allowed to read his written submission did not seem to have adversely affected the complainant as the representative gave his submission to the panel chairman at the end of the hearing.

We did not find that the board of review was at fault with respect to the complaint that the representative was not able to assist as much as he had planned in the appeal. The panel did not tell the representative that he could not assist in the presentation of the appeal. Rather, according to the transcript, the chairman stated that as the representative was unfamiliar with the procedures, he took it that the union representative wished the panel to ask the relevant questions. The representative could have assisted in the presentation of the appeal by asking the relevant questions but allowed the chairman to ask the questions instead.

In conclusion, we found that nothing could be done after the fact to rectify the complainant having to wait for some time in the hallway. Furthermore, it appeared from the chairman's explanation that adequate waiting and lighting facilities are normally provided. Further, nothing could be done after the fact to rectify the lack of familiarity with procedures. The brochure appeared to provide an adequate explanation. As a result, we discontinued the investigation. (CS85-155)

Expedited hearing denied

A worker complained that the boards of review unfairly denied his request for an expedited hearing. The complainant had received a decision on December 28, 1984 to terminate his compensation benefits and appealed to the board of review on January 7, 1985. On March 20, 1985, he requested an expedited hearing because the delay was causing him mental, physical and financial hardship. He submitted financial information showing he was in financial hardship.

On investigation, we asked if he had any new information regarding his financial situation. He stated he feared he would lose his home as he had missed three mortgage payments and his mortgagee had written him a letter stating if he missed one more mortgage payment, foreclosure proceedings would begin. We asked that he send us a copy of the letter, but the letters we received contained no such threat.

In deciding which request for an expedited hearing will be granted, the boards of review consider various factors. For example, the individual must have no other means of support. There must be some demonstrated hardship resulting from the delay. An individual must be able to attend a hearing on short notice and there must be a space available from a cancellation. At the time of our investigation, the boards of review had a backlog of some 5,000 appeals. With so many people waiting to be heard, the boards took the position that it would be unfair to the other individuals waiting their turn to grant an expedited hearing to a person whose financial situation was no worse than others.

In our complainant's case, he presented evidence that he was suffering financial hardship. The board found, however, his circumstances were not any more acute than many other individuals who had been waiting for substantial periods of time for their appeals to be heard. We were unable to support the worker's complaint.

However, we did advise him that the Minister of Labour had recently introduced legislation which would speed up the appeal process by providing more panels. This legislation has now been proclaimed. (CS85-156)

PART III — Statistics

Introduction To Statistics

To assist in understanding the statistical reports the following definitions and examples are included:

1. Substantiated

Where, after investigation, all significant elements of the complaint were confirmed.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation revealed that the complainant was indeed injured on the job and was entitled to compensation.

a) Substantiated but Not Rectified

Where after investigation, it is clear that the complaint has been substantiated and the authority refuses to remedy the situation.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation revealed that the complainant was indeed injured on the job and was entitled to compensation. The Ombudsman's Office recommended that full compensation be paid. The Workers' Compensation Board refused to comply.

b) Substantiated in Part but Not Rectified

Where, after investigation, it is clear that some elements of a complaint are confirmed while other elements of the complaint were shown to be unfounded or we are not able on the evidence to substantiate those elements. The authority refuses to rectify the substantiated elements of the complaint.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation revealed that the complainant's on the job injury was only responsible for fifty per cent of the work missed. The Ombudsman recommended that compensation be paid for half of the time lost. The Workers' Compensation Board refused to comply.

c) Substantiated and Rectified

Where, after investigation, it is clear that the complaint has been substantiated in whole or in part and that a settlement has been reached pursuant to section 16, 22, 23 or 24 which remedies the situation.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The com-

plainant applied to the Workers' Compensation Board for compensation and was refused. The investigation revealed that the complainant was indeed injured on the job and was entitled to compensation. The Ombudsman's Office recommended that full compensation be paid. The Workers' Compensation Board agrees to this proposal and the complainant is compensated in full.

d) Substantiated and Rectified in Part

Where, after investigation, it is clear that the complaint has been substantiated in whole or in part and that a settlement has been reached pursuant to sections 16, 22, 23 or 24 which partially remedies the situation.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation revealed that the complainant was indeed injured on the job and was entitled to compensation. The Ombudsman's Office recommended that full compensation be paid. The Workers' Compensation Board agrees to compensate the worker for only half of the time lost.

2. Resolved

Where the complaint is substantially redressed prior to or not as a result of the Office of the Ombudsman's attempts at settlement made pursuant to sections 16, 22 or 23 of the Act.

a) Resolved by the Authority

Where the complaint is substantially redressed by the Authority against whom the complaint was made.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the complainant had already appealed the Board's decision and that the board had decided on its own to fully compensate the complainant.

b) Resolved by Another Authority

Where the complaint is substantially redressed by a body other than the Authority against whom the complaint was made.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the complainant had also complained about the matter to the Human Rights Council. As a result of the intervention of the Human Rights Council, the complainant was fully compensated.

c) Resolved/Other

Where, due to a change in the circumstances, the grounds for the complaint disappeared without any active involvement on the part of the Ombudsman or an Authority.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the complainant had private loss of income insurance which has fully compensated him for his loss.

3. Not Substantiated

a) Where it is clear that the complainant's allegations of wrongdoing are unfounded.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the complainant was injured while on a weekend fishing trip and consequently had no legitimate claim for compensation.

b) Where, based on the evidence, it is not possible to come to a conclusion.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the

only witness to the alleged work-related accident claims that the complainant arrived at work with the injury. The complainant maintains that the injury occurred on the job. The result is that it's one person's word against the other's. Consequently, the Ombudsman's Office is unable to substantiate the complaint.

4. Discontinued/Declined/ Withdrawn/Abandoned

a) Discontinued

Where the Ombudsman began an investigation but subsequently decided not to pursue the matter because of one of the reasons listed in Section 13.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The investigation reveals that the Workers' Compensation Board has already compensated the complainant to the maximum of its ability to pay. It would be impossible to compensate the complainant further for the injury. The complaint is therefore discontinued pursuant to section 13(f) because further investigation would not benefit the complainant.

b) Declined

Where the Ombudsman decides not to commence an investigation because of one of the reasons listed in section 13. Some initial inquiries may be made before this decision is arrived at.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. It is learned that the incident occurred five years ago and that the complainant missed only two weeks of work. The complaint is declined pursuant to section 13(a) and (d) because the incident happened more than one year ago and the matter is trivial.

c) Withdrawn

Where the complainant notifies the Office of the Ombudsman that they no longer wish to have their complaint pursued by the office.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. The complainant contacts the office to advise that he has hired a lawyer to challenge the Workers' Compensation Board in the courts and therefore wishes to withdraw his complaint under the Ombudsman Act.

d) Abandoned

Where the complainant cannot be reached in connection with the matter over which he or she originally complained, or does not respond to requests by the Office of the Ombudsman for further information or fails to respond to letters requesting that the complainant contact the Ombudsman's Office.

Example

A complaint is received alleging that a complainant was injured on the job and subsequently missed work as a result. The complainant applied to the Workers' Compensation Board for compensation and was refused. When the Ombudsman's staff attempts to investigate they find that the complainant has disappeared, leaving no forwarding address or telephone number.

TABLE 1

Profile of Complainants, and Complaints Closed Between January 1, 1985 and December 31, 1985

		Number	Percent
COMPLAINANT GROUP	Individual/Family	11,702	97.4
	Business	138	1.2
	Union	13	0.1
	Group	125	1.0
	Public Servant	4	0.0
	Others	36	0.3
	TOTAL	12,018	100.0
COMPLAINT INITIATOR	Aggrieved Party	11,055	92.0
	Relative/Friend	661	5.5
	MLA and MP	29	0.2
	Professional	101	0.8
	Ombudsman	55	0.5
	Public Servant	43	0.4
	Others	74	0.6
	TOTAL	12,018	100.0
INITIATOR'S GENDER	Male	6,800	56.6
	Female	5,095	42.4
	Family	53	0.4
	Group/Other	70	0.6
	TOTAL	12,018	100.00
FIRST CONTACT	In person	1,218	10.1
	Letter	781	6.5
	Telephone	9,981	83.1
	Not Applicable	38	0.3
	TOTAL	12,018	100.0
COMPLAINT INITIATED AT:	Victoria	7,753	64.5
	Vancouver	3,597	29.9
	Local Visit	247	2.1
	Other	421	3.5
	TOTAL	12,018	100.0

TABLE 2

Percentage of Complaints Closed by Regional District as of December 31, 1985

Regional Districts	Percentage of Total B.C. Population (June 1981)	Percentage of Total Ombudsman Complaints Closed (Jan. to Dec. 1985)
1. Alberni-Clayoquot	1.2	1.3
2. Bulkley-Nechako	1.4	1.8
3. Capital Region	9.1	15.5
4. Cariboo	2.2	2.3
5. Central Fraser Valley	4.2	3.0
6. Central Kootenay	1.9	1.7
7. Central Okanagan	3.1	2.9
8. Columbia-Shuswap	1.5	1.8
9. Comox-Strathcona	2.5	2.6
10. Cowichan Valley	1.9	1.7
11. Dewdney-Alouette	2.2	1.8
12. East Kootenay	2.0	3.2
13. Fraser-Cheam	2.0	2.6
14. Fraser-Fort George	3.3	5.0
15. Greater Vancouver	42.6	30.9
16. Kitimat-Stikine	1.5	2.0
17. Kootenay Boundary	1.2	1.1
18. Mount Waddington	0.5	0.5
19. Nanaimo	2.8	3.4
20. North Okanagan	2.0	2.6
21. Central Coast	0.1	0.2
22. Okanagan-Similkameen	2.1	1.8
23. Peace River-Liard	2.0	3.4
24. Powell River	0.7	0.4
25. Skeena-Queen Charlotte	0.9	0.7
26. Squamish-Lillooet	0.7	0.7
27. Stikine Region (Unincorporated)	0.1	0.0
28. Sunshine Coast	0.6	0.4
29. Thompson-Nicola	3.7	3.8
Out-of-Province	N/A	0.9
TOTAL	100.0	100.0

TABLE 3 **Disposition of Complaints (Proclaimed Authorities) Closed Between January 1985 and December 31 1985.**

	Substantiated Rectified after Recommendation	Substantiated but Not Rect.	Resolved Corrected during Investigation	Not Substantiated	Declined Withdrawn Discontin.	TOTAL
A MINISTRIES						
Agriculture and Food	–	–	–	1	8	9
Attorney General	129	1	302	190	209	831
Consumer & Corp.	2	–	10	22	27	61
Education	1	–	14	8	15	38
Energy, Mines	–	2	3	4	7	16
Environment	2	–	29	23	37	91
Finance	1	–	11	23	17	52
Forests	1	1	16	19	33	70
Health	4	–	285	105	175	569
Human Resources	67	7	679	473	594	1820
Labour	4	4	20	–	46	74
Boards of Review	2	2	11	5	36	56
Lands, Parks & Housing	3	2	21	26	36	88
Municipal Affairs	2	–	5	8	13	28
Provincial Secretary	–	–	16	12	9	37
T. & Highways	4	3	70	96	76	249
Tourism	–	–	–	–	1	1
SUB-TOTAL	222	22	1492	1015	1339	4090
PERCENT	5.4	.5	36.5	24.8	32.8	100.0
B BOARDS, COMMISSIONS, ETC.						
Agricultural Land Comm.	–	–	–	–	6	6
B.C. Assessment	2	–	5	5	15	27
B.C. Board of Parole	–	–	1	2	2	5
B.C.B.C.	–	–	–	2	4	6
B.C. Ferry Corp.	1	–	3	1	5	10
B.C.H.M.C.	–	–	8	10	6	24
B.C. Hydro	–	1	221	37	106	365
B.C. Railway	–	–	2	1	2	5
B.C. Transit	–	–	–	3	3	6
College Boards	2	–	3	–	3	8
Criminal Injuries	–	–	4	–	14	18
Environmental A.Brd.	1	–	–	1	1	3
I.C.B.C.	4	1	137	71	211	424
Labour Rel. Board	–	–	1	9	4	14
Metro Transit	–	–	–	2	6	8
Motor Carrier Comm.	–	–	–	1	14	15
Municipal Police Brds.	2	–	1	1	13	17
Public Service Comm.	–	–	2	1	1	4
W.C.B.	12	5	133	77	510	737
OTHERS	–	–	8	6	28	42
SUB-TOTAL	24	7	529	230	954	1744
PERCENT	1.4	.4	30.3	13.2	54.7	100.0
TOTALS A & B	246	29	2021	1245	2293	5834
PERCENT	4.2	.5	34.6	21.3	39.4	100.0

TABLE 4

Extent of Service

Complaints Against Unproclaimed Authorities
(Sections 3-11 Schedule of the *Ombudsman Act*)
Closed between January 1985 and December 1985

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Municipalities (Section 4)	–	151	12	163
Regional Districts (Section 5)	4	68	3	75
Public Schools (Section 7)	1	45	4	50
Universities (Section 8)	2	1	–	3
Colleges & Provincial Institutes (Section 9)	–	–	–	–
Hospital Boards (Section 10)	1	10	3	14
Professional and Occupational Associations (Section 11)	–	6	1	7
TOTAL	8	281	23	312
PERCENT	2.6	90.1	7.3	100.0

TABLE 5

Extent of Service

Non-Jurisdictional Complaints
Closed between January 1985 and December 1985

	Extent of Service			
	No assistance necessary or possible	Information provided/ Referral arranged	Inquiries made and resolution facilitated	TOTAL
Federal, other provincial, territorial and foreign governments	17	674	34	725
Marketplace matters – requests for personal assistance	119	2,864	679	3,662
Professionals actions	17	235	17	269
Legal & Court matters	29	360	22	411
Police Matters	14	118	13	145
Miscellaneous	16	552	92	660
TOTAL	212	4,803	857	5,872
PERCENT	3.6	81.8	14.6	100.0

TABLE 6

Reasons for Discontinuing Investigations
All Jurisdictional Closed Complaints

Reasons		Number	Percent
1. No Jurisdiction		34	1.5
2. Abandoned by Complainant		193	8.4
3. Withdrawn by Complainant		341	14.9
4. Statutory Appeal (Section 11 (1) (a))		361	15.8
5. Solicitor (Section 11 (1) (b))		12	.5
6. Discontinued by Ombudsman (Discretionary)		1,352	58.9
(a) Over 1 year old	10		
(b) Insufficient personal interest	24		
(c) Other available remedy	807		
(d) Frivolous	57		
(e) Investigation unnecessary	252		
(f) Investigation not beneficial	202		
TOTAL		2,293	100.0

TABLE 7

Level of Impact

Closed between January and December 1984

	Level of Impact					
	Individual Only	Practice	Procedure	Regulation	Statute	TOTAL
Resolved Complaints	1,826	131	38	25	1	2,021
Rectified Complaints	34	15	190	5	2	246
TOTAL	1,860	146	228	30	3	2,267

TABLE 8a

Budget Estimates

Year	Salaries	Operating Expenses	TOTAL
1980/81	631,203	387,000	1,018,203
1981/82	955,405	504,720	1,460,125
1982/83	1,251,497	508,843	1,760,350
1983/84	1,110,744	508,000	1,618,744
1984/85	1,144,295	793,725	1,938,020
1985/86	1,263,259	767,897	2,031,156

TABLE 8b

Actual Expenditures

Year	Operating Salaries	Contingency Expenses	Salaries paid from Ministry of Vote	Summer Student Program paid by Cash Labour	Benefits	TOTAL
1980/81	709,166	430,826	109,004	26,903	41,214	1,317,113
1981/82	970,199	482,406	100,299	–	35,466	1,588,300
1982/83	1,227,378	463,378	9,825	–	53,948	1,754,529
1983/84	1,118,880	499,359	–	–	56,870	1,675,109
1984/85	1,166,748	834,005	–	–	56,704	2,057,457

TABLE 9

List of Reports

Year	Cabinet Reports (Sec. 24)	Special Reports (to the Legislature) (Sec. 24)	Public Reports Sec. 30(2))
1981	4	3	1
1982	1	2	1
1983	3	3	–
1984	5	7	1
1985	13	7	1
TOTALS	26	15	4

TABLE 10

Number of Complaints Closed for Selected Ministries, Boards, Commissions, Etc.

	1982	1983	1984	1985
Human Resources	599	984	1,369	1,820
Attorney General	419	428	988	831
Workers' Compensation	440	482	641	737
Health	163	209	301	569
I.C.B.C.	791	810	499	424
B.C. Hydro & Power	135	159	212	365
Transportation & Highways	220	263	285	249
Lands, Parks & Housing	139	163	131	88
Consumer & Corp. Affairs	346	213	103	61

TABLE 11

Closed Complaints by Jurisdiction and Year

Year	Total Complaints Closed	Number Outside Jurisdiction	Number Within Jurisdiction	Percent Within Jurisdiction
1979-80	4,197	2,309	1,888	44.9
1981	4,765	2,008	2,757	57.8
1982	7,979	3,851	4,128	51.7
1983	9,762	5,156	4,606	47.2
1984	11,343	5,636	5,707	50.3
1985	12,018	6,184	5,834	48.5

TABLE 12

Disposition of Jurisdictional Complaints 1979-1985: Numbers of Complaints Closed

	79/80*	1981	1982	1983	1984	1985
Substantiated and Rectified	59	180	135	139	148	246
Substantiated but Not rectified	0	74	18	20	51	29
Resolved	506	601	1,169	1,417	1,905	2,021
Not substan.	459	682	880	1,123	1,264	1,245
Discontinued	864	1,220	1,926	1,907	2,339	2,293
TOTALS	1,888	2,757	4,128	4,606	5,707	5,834

* 15 months

TABLE 13

Disposition of Jurisdictional Complaints 1979-1985: Percentages

	79/80*	1981	1982	1983	1984	1985
Substantiated and Rectified	3	7	3	3	3	4
Substantiated but Not rectified	0	3	1	1	1	1
Resolved	27	22	28	31	33	35
Not substan.	24	25	21	24	22	21
Discontinued	46	44	47	41	41	39

* 15 months

TABLE 14

Complaints Received and Closed

Year	New Complaints Received	Percent Increase Over Previous Year	Complaints Closed	Percent Increase Over Previous Year
1979	924	–	256	–
1980	3,840	–	3,941	–
1981	4,935	28.5	4,765	20.9
1982	8,179	65.7	7,979	67.5
1983	9,534	16.6	9,762	22.3
1984	11,462	20.2	11,343	16.2
1985	11,308	−1.3	12,018	5.9
79-85	50,186		50,064	

TABLE 15

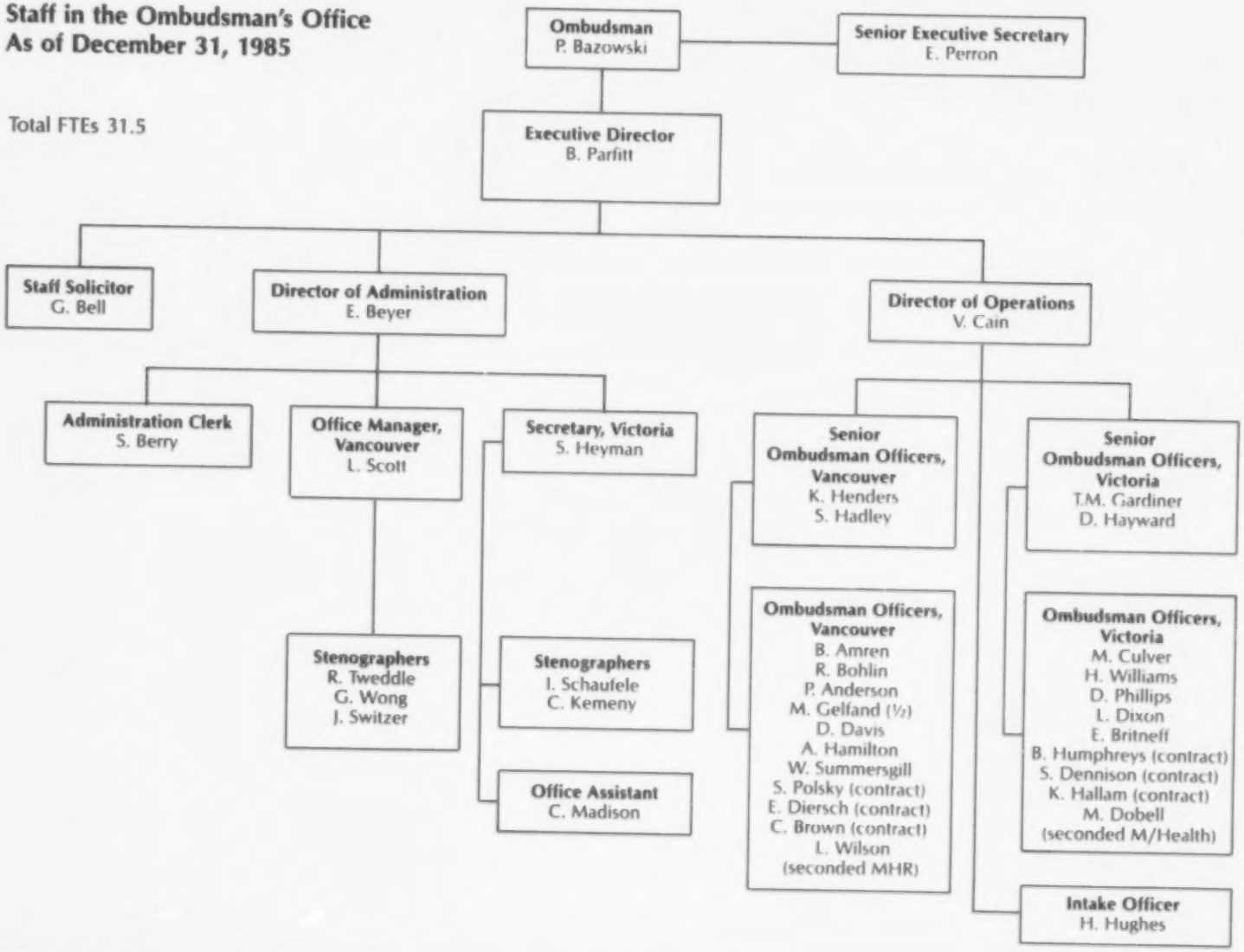
1985 Complaint Load

1979-1984 complaints carried into 1985	1,428
New complaints received in 1985	11,308
Total active complaints in 1985	12,736
Complaints closed in 1985	12,018
Complaints still under investigation at year ending December 31, 1985	1,098*

* Complaints still under investigation at year end will be larger than the difference between "total active complaints" and "complaints closed" in 1985 because occasionally a second complaint is registered for a complainant for whom we originally opened one complaint file. A few complaints have to be re-opened for a variety of reasons after they have been closed, but are not counted as "new complaints received".

Staff in the Ombudsman's Office
As of December 31, 1985

Total FTEs 31.5



Part IV - The Ombudsman Act

OMBUDSMAN ACT

[Provisions of Schedule not in force]

CHAPTER 306

[Act administered by the Ministry of Attorney General] [Consolidated January 20, 1984.]

Interpretation

1. In this Act "authority" means an authority set out in the Schedule and includes members and employees of the authority.

1977-58-1

Appointment of Ombudsman

2. (1) The Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to him under this Act.

(2) The Legislative Assembly shall not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

1977-58-2(1,2)

Term of office

3. (1) The Ombudsman shall be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsman shall not hold another office or engage in other employment.

1977-58-2(3,4)

Remuneration

4. (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary equal to the salary of a Supreme Court judge.

(2) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred by him in discharging his duties.

1977-58-2(5,6)

Pension

5. (1) Subject to subsections (2) to (5), the *Pension (Public Service) Act* applies to the Ombudsman.

(2) An Ombudsman who retires, is retired or removed from office after at least 10 years' service shall be granted an annual pension payable on or after attaining age 60.

(3) Where an Ombudsman who has served at least 5 years is removed from office due to physical or mental disability, section 19 of the *Pension (Public Service) Act* applies and he is entitled to a superannuation allowance commencing the first day of the month following his removal.

(4) Where an Ombudsman who has served at least 5 years dies in office, section 20 of the *Pension (Public Service) Act* applies and the surviving spouse is entitled to a superannuation allowance commencing the first day of the month following the death.

(5) Where calculating the amount of a superannuation allowance under this section

(a) each year of service as Ombudsman shall be counted as 1 1/2 years of pensionable service; and

(b) the number of years referred to in section 19 (1) (b) of the *Pension (Public Service) Act* shall be multiplied by 1.5.

1977-58-2(7 to 11).

Resignation, removal or suspension

6. (1) The Ombudsman may at any time resign his office by written notice to the Speaker of the Legislative Assembly or to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from the Province.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor shall, in accordance with the recommendation,

(a) suspend the Ombudsman, with or without salary; or

(b) remove the Ombudsman from his office.

(3) Where

(a) the Ombudsman is suspended or removed;

(b) the office of Ombudsman becomes vacant for a reason other than by operation of paragraph (f); or

(c) the Ombudsman is temporarily ill or temporarily absent for another reason

the Lieutenant Governor shall, on the recommendation of the Legislative Assembly, appoint an acting Ombudsman to hold office until

(d) the appointment of a new Ombudsman under section 2;

(e) the end of the period of suspension of the Ombudsman;

(f) the expiry of 30 sitting days after the commencement of the next session of the Legislature; or

(g) the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

(4) When the Legislature is not sitting and is not ordered to sit within the next 5 days the Lieutenant Governor in Council may suspend the Ombudsman from his office, with or without salary, for cause or incapacity, but the suspension shall not continue in force after the expiry of 30 sitting days.

1977-58-3.

Lieutenant Governor in Council may appoint acting Ombudsman

7. (1) Where

(a) the Ombudsman is suspended or removed; or

(b) the office of Ombudsman becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but no recommendation under section 2 or 6 (3) is made by the Legislative Assembly before the end of that sitting or before an adjournment of the Legislature exceeding 5 days, or

(c) the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days; or

(d) the Ombudsman is temporarily ill or temporarily absent for another reason,

the Lieutenant Governor in Council may appoint an acting Ombudsman.

(2) The appointment of an acting Ombudsman under subsection (1) terminates

(a) on the appointment of a new Ombudsman under section 2;

(b) at the end of the period of suspension of the Ombudsman;

(c) immediately after the expiry of 30 sitting days after the day on which he was appointed;

(d) on the appointment of an acting Ombudsman under section 6 (3); or

(e) on the return to office of the Ombudsman from his temporary illness or absence,

whichever occurs first.

1977-58-4.

Staff

8. (1) Employees necessary to enable the Ombudsman to perform his duties may be appointed in accordance with the *Public Service Act*.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsman shall be deemed to be a deputy minister.

(3) The Ombudsman may exercise any power, authority or duty of the Public Service Commission that the commission may delegate under section 75 (3) of the *Public Service Act*.

(4) The Ombudsman may make a special report to the Legislative Assembly where he believes the

(a) amounts and establishment provided for the office of the Ombudsman in the Estimates; or

(b) services provided to him by the Public Service Commission or the Government Employee Relations Bureau

are inadequate to enable him to fulfil his duties.

1977-58-5.

Confidentiality

9. (1) Before beginning to perform his duties, the Ombudsman shall take an oath before the Clerk of the Legislative Assembly that he will faithfully and impartially exercise the powers and perform the duties of his office, and that he will not, except where permitted by this Act, divulge any information received by him under this Act.

(2) A person on the staff of the Ombudsman shall, before he begins to perform his duties, take an oath before the Ombudsman that he will not, except where permitted by this Act, divulge any information received by him under this Act, and for the purposes of this subsection the Ombudsman is a commissioner for taking affidavits for British Columbia.

(3) The Ombudsman and every person on his staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

(4) Neither the Ombudsman nor a person holding an office or appointment under the Ombudsman shall give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of his duties under this Act, except to enforce his powers of investigation, compliance with this Act or with respect to a trial of a person for perjury.

(5) An investigation under this Act shall be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(6) Notwithstanding this section, the Ombudsman may disclose or authorize a member of his staff to disclose a matter that, in his opinion, is necessary to

(a) further an investigation;

(b) prosecute an offence under this Act; or

(c) establish grounds for his conclusions and recommendations made in a report under this Act.

1977-58-6.

Powers and duties of Ombudsman in matters of administration

10. (1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate

(a) a decision or recommendation made;

(b) an act done or omitted; or

(c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

(a) a decision, recommendation or act is final;

(b) no appeal lies in respect of it; or

(c) no proceeding or decision of the authority whose decision, recommendation or act it is shall be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall

(a) subject to any special directions, investigate the matter referred so far as it is within his jurisdiction; and

(b) report back as he thinks fit, but sections 22 to 25 do not apply in respect of an investigation or report made under this subsection.

1977-58-7.

Jurisdiction of Ombudsman

11. (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission

(a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired; or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsman may investigate conduct occurring prior to the commencement of this Act.

(3) Where a question arises as to the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, he may apply to the Supreme Court for a declaratory order determining the question.

1977-58-8.

Complaint to Ombudsman

12. (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint shall be in writing.

(3) Notwithstanding any enactment, where a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman, it shall be mailed or forwarded immediately, unopened, to the Ombudsman by the person in charge of the institution, hospital or facility in which the writer is confined or by the person having custody of the person; and a communication from the Ombudsman to such a person shall be forwarded to that person in a like manner.

1977-58-9.

Refusal to investigate

13. The Ombudsman may refuse to investigate or cease investigating a complaint where in his opinion

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which his complaint refers more than one year before the complaint was received by the Ombudsman;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and if the person aggrieved has not availed himself of the remedy, there is no reasonable justification for his failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint; or

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved.

1977-58-10.

Ombudsman to notify authority

14. (1) If the Ombudsman investigates a matter, he shall notify the authority affected and any other person he considers appropriate to notify in the circumstances.

(2) The Ombudsman may at any time during or after an investigation consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) Where before the Ombudsman has made his decision respecting a matter being investigated he receives a request for consultation from the authority, he shall consult with the authority.

1977-58-11

Power to obtain information

15. (1) The Ombudsman may receive and obtain information from the persons and in the manner he considers appropriate, and in his discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsman may

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, converse in private with any person there and otherwise investigate matters within his jurisdiction;

(b) require a person to furnish information or produce a document or thing in his possession or control that relates to an investigation at a time and place he specifies, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before him and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; and

(e) receive and accept, on oath or otherwise, evidence he considers appropriate, whether or not it would be admissible in a court.

(3) Where the Ombudsman obtains a document or thing under subsection (2) and the authority requests its return, the Ombudsman shall within 48 hours after receiving the request return it to the authority, but he may again require its production in accordance with this section.

1977-58-12.

Opportunity to make representations

16. Where it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman shall inform the authority or person of the grounds and shall give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman, before he decides the matter.

1977-58-13.

Executive Council proceedings

17. Where the Attorney General certifies that the entry on premises, the giving of information, the answering of a question or the production of a document or thing might

(a) interfere with or impede the investigation or detection of an offence;

(b) result in or involve the disclosure of deliberations of the Executive Council; or

(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.

the Ombudsman shall not enter the premises and shall not require the information or answer to be given or the document or thing to be produced, but shall report the making of the certificate to the Legislative Assembly not later than in his next annual report.

1977-58-14.

Application of other laws respecting disclosure

18. (1) Subject to section 17, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.

(2) Subject to section 17 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter shall not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 17 but notwithstanding subsection (2), where a person is bound to maintain confidentiality in respect of a matter only by virtue of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), he shall disclose the information, answer questions and produce documents or things on the request of the Ombudsman.

(4) Subject to section 17, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person shall, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

1977-58-15.

Privileged information

19. (1) Subject to section 18, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as that person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

1977-58-16.

Witness and information expenses

20. (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if he were a witness in the Supreme Court.

(2) Where a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may in his discretion reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

1977-58-17.

Where complaint not substantiated

21. Where the Ombudsman decides not to investigate or further investigate a complaint, or where at the conclusion of an investigation the Ombudsman decides that

the complaint has not been substantiated, he shall as soon as is reasonable notify in writing the complainant and the authority of that decision and the reasons for it and may indicate any other recourse that may be available to the complainant.

1977-58-18.

Procedure after investigation

22. (1) Where, after completing an investigation, the Ombudsman believes that

(a) a decision, recommendation, act or omission that was the subject matter of the investigation was

(i) contrary to law;

(ii) unjust, oppressive or improperly discriminatory;

(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;

(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;

(v) related to the application of arbitrary, unreasonable or unfair procedures; or

(vi) otherwise wrong;

(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority

(i) did so for an improper purpose;

(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or

(iii) was negligent or acted improperly; or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsman shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate.

(2) Without restricting subsection (1), the Ombudsman may recommend that

(a) a matter be referred to the appropriate authority for further consideration;

(b) an act be remedied;

(c) an omission or delay be rectified;

(d) a decision or recommendation be cancelled or varied;

(e) reasons be given;

(f) a practice, procedure or course of conduct be altered;

(g) an enactment or other rule of law be reconsidered; or

(h) any other steps be taken.

1977-58-19.

Authority to notify Ombudsman of steps taken

23. (1) Where the Ombudsman makes a recommendation under section 22, he may request that the authority notify him within a specified time of the steps that have been or are proposed to be taken to give effect to his recommendation, or if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) Where, after considering a response made by an authority under subsection (1) the Ombudsman believes it advisable to modify or further modify his

recommendation, he shall notify the authority of his recommendation as modified and may request that the authority notify him of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

1977-58-20.

Report of Ombudsman where no suitable action taken

24. (1) If within a reasonable time after a request by the Ombudsman has been made under section 23 no action is taken that the Ombudsman believes adequate or appropriate, he may, after considering any reasons given by the authority, submit a report of the matter to the Lieutenant Governor in Council and, after that, may make such report to the Legislative Assembly respecting the matter as he considers appropriate.

(2) The Ombudsman shall attach to a report under subsection (1) a copy of his recommendation and any response made to him under section 23, but he shall delete from his recommendation and from the response any material that would unreasonably invade any person's privacy, and may in his discretion delete material revealing the identity of a member, officer or employee of an authority.

1977-58-21.

Complainant to be informed

25. (1) Where the Ombudsman makes a recommendation pursuant to section 22 or 23 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, he shall inform the complainant of his recommendation and make such additional comments as he considers appropriate.

(2) The Ombudsman shall in every case inform the complainant within a reasonable time of the result of the investigation.

1977-58-22.

No hearing as of right

26. Except as provided in this Act, a person is not entitled as of right to a hearing before the Ombudsman.

1977-58-23.

Ombudsman not subject to review

27. Proceedings of the Ombudsman shall not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

1977-58-24.

Proceedings privileged

28. (1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything he may in good faith do, report or say in the course of the exercise or purported exercise of his duties under this Act.

(2) For the purposes of any Act or law respecting libel or slander,

(a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceedings before the

Ombudsman under this Act are privileged to the same extent as if the inquiry or proceedings were proceedings in a court; and

(b) a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

1977-58-25.

Delegation of powers

29. (1) The Ombudsman may in writing delegate to any person or class of persons any of his powers or duties under this Act, except the power

(a) of delegation under this section;

(b) to make a report under this Act; and

(c) to require a production or disclosure under section 18 (1).

(2) A delegation under this section is revocable at will and does not prevent the exercise at any time by the Ombudsman of a power so delegated.

(3) A delegation may be made subject to terms the Ombudsman considers appropriate.

(4) Where the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.

(5) A person purporting to exercise power of the Ombudsman by virtue of a delegation under this section shall, when requested to do so, produce evidence of his authority to exercise the power.

1977-58-26.

Annual and special reports

30. (1) The Ombudsman shall report annually on the affairs of his office to the Speaker of the Legislative Assembly, who shall cause the report to be laid before the Legislative Assembly as soon as possible.

(2) The Ombudsman, where he considers it to be in the public interest or in the interest of a person or authority, may make a special report to the Legislative Assembly or comment publicly respecting a matter relating generally to the exercise of his duties under this Act or to a particular case investigated by him.

1977-58-27.

Offences

31. A person commits an offence who,

(a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of his power or duties under this Act;

(b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;

(c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of his powers or duties under this Act; or

(d) violates an oath taken under this Act.

1977-58-28.

Other remedies

32. The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

(a) a remedy or right of appeal or objection is provided; or

(b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal or objection or procedure.

1977-58-29.

Rules

33. (1) The Legislative Assembly may on its own initiative or on the recommendation of the Lieutenant Governor in Council make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of his duties imposed by this Act.

1977-58-30.

Additions to Schedule

34. The Lieutenant Governor in Council may by order add authorities to the Schedule.

1977-58-31.

Commencement

35. Sections 3 to 11 of the Schedule come into force by regulation of the Lieutenant Governor in Council.

1977-58-34; 1983-10-25, effective October 26, 1983 (B.C. Reg. 393/83).

SCHEDULE

AUTHORITIES

1. Ministries of the Province.

2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council;

(b) in the discharge of their duties, public officers or servants of the Province; or

(c) responsible to the Province.

[3. A corporation the ownership of which or a majority of the shares of which is vested in the Province.

4. Municipalities.

5. Regional districts.

6. The Islands Trust established under the *Islands Trust Act*.

7. Public schools, colleges and boards of school trustees as defined in the *School Act* and college councils established under that Act.

8. Universities and the universities council as defined in the *University Act*.

9. Institutions as defined in the *College and Institute Act*.

10. Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

11. Governing bodies of professional and occupational associations that are established or continued by an Act.]

1977-58-Sch.; *[bracketed sections 3 to 11 to be proclaimed]*: 1983-3-34, effective December 22, 1983 (B.C. Reg. 486/83).

20/1/84

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